

International Law

History—Aliens—Citizenship—Prisoners
—Spies—Traitors—Truce—Peace—
Treaties—Submarines—
Aeroplanes—Etc.

1918

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INTERNATIONAL LAW

By

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Dedicated
to
Our Army, Naval and Aviation Forces
and
To My Son
Sergeant B. Alexander Singer
Somewhere in France

Preface

This book is especially prepared for our Army, Naval and Aviation Forces. It is a ready compendium for any question which may come up in their everyday's work with reference to International Law. International Law teaches civilization, its fundamental principles are based on friendly intercourse, and nations are bound to maintain respectable tribunals to which the citizens of other states may have recourse. In those tribunals the status of commerce, industry, etc., is treated in accordance with the well established rules of International Law. Treaties are made for peace and war, and my book treats both subjects in such a manner that the student will find a ready reference to each question of International Law.

The outbreak of the world war, in 1914, brought to the forefront two new war devices which prior thereto were relegated to the rank of experimental devices of destruction. The introduction of the submarine and the aeroplane has played a most conspicuous part in the present war, and this has induced me to devote some attention to the submarine and to the aeroplane, so that the student may have a clear understanding of the laws governing the employment of aeroplanes and submarines.

The navy is the protector of our commerce, and I fully agree with Admiral Schley, who said (in his speech at Philadelphia, December 22, 1898): "The navy is that arm of the public defence, the nature of whose duties is dual, in that they relate to both peace and war. In time of peace the navy blazes the way across the trackless deep, maps out and marks the dangers which lie in the routes of commerce, in order that the peaceful argosies of trade may pursue safe routes to distant markets of the world, there to exchange the varied commodities of commerce. The bones of the officers and

men of the navy lie in every country in the world, or along the highways of commerce; they mark the resting places of martyrs to a sense of duty that is stronger than any fear of death."

I dedicate this book to the masters of the world's present situation,—to our Army, Naval, and Aviation Forces.

BERTHOLD SINGER.

Chicago, November 15, 1918.

TABLE OF CONTENTS

PART I.

I. International Law	1
II. Historical Development of International Law.....	3
1. Introduction.	
2. The Egyptian Commonwealth.	
3. International Relations of Egypt.	
4. The Phenicians.	
5. The Babylonians and Assyrians.	
6. The Persian Empire.	
7. The Israelites.	
8. The Hellenic World.	
9. The International Relations of the Hellenes.	
10. War and Peace.	
11. The Right of Foreigners in Hellas.	
12. Macedonia.	
13. The Roman State.	
14. International Relations of the Romans.	
15. Treaties.	
16. The Jus Gentium of the Romans.	
17. Medieval States.	
18. Maritime Law.	
19. Grotius.	
III. States	11
1. State Defined.	
2. Sovereignty and Independence.	
3. Neutralized States.	
4. Semi-Sovereign States.	
5. Protected States.	
IV. State and Government	14
1. Kinds of Government.	
2. De Facto and De Jure Governments.	
3. Military Occupation.	
4. Confederate Government.	
5. Rights and Duties of States.	
6. Recognition of States.	
7. Recognition of Belligerency.	
8. Changes of Government.	
V. Acquisition and Loss of Sovereignty.....	18
1. Acquisition of Title to Territory.	
2. Rules for Establishing Title to Territory.	
3. Modes of Acquiring Title to Territory.	
VI. National Jurisdiction	20
1. Jurisdiction Over Vessels.	
2. Limitations of Jurisdiction.	
3. Status of Aliens.	

VII.	Exemption from Territorial Jurisdiction.....	21
	1. Extraterritorial Jurisdiction.	
	2. The Right of Asylum.	
VIII.	Citizenship	22
IX.	Naturalization	24
	Naturalization Laws.	
	1. Requirements for Acquiring Citizenship.	
	2. Declaration of Intention.	
	3. Declaration of Withdrawal.	
	4. Continuous Residence.	
	5. Dual Nationality.	
	6. Impeachment of Citizenship.	
	7. Requirements in Other Countries.	
X.	Naturalization in Time of War.....	35
XI.	Aliens	36
	1. Residence.	
	2. Sojourners.	
XII.	Expatriation	37
XIII.	Diplomatic Agents	39
	1. Commissioners and Special Envoys.	
	2. Appointment.	
	3. Classification of Ministers.	
	4. Diplomatic Grades in the United States.	
	5. Grade of Diplomatic Representatives.	
	6. Superadded Consular Office.	
	7. Credentials and Reception.	
	8. Secretaries of Embassy or Legation.	
	9. Rights to Protection.	
	10. Conseiller.	
	11. Attachés.	
	12. Military Attachés.	
	13. Naval Attachés.	
	14. Scientific Attachés.	
	15. Local Counsel.	
	16. Claims.	
	17. Diplomatic and Consular Functions.	
	18. Duties of Diplomatic Agents.	
	19. Speeches.	
	20. Presents.	
XIV.	Consular Service.....	50
	1. Classes and Titles.	
	2. Commercial Agents.	
	3. Consuls.	
	4. Powers and Duties.	
	5. Shipment and Discharge of Seamen.	
	6. Deserters.	
	7. Jurisdiction.	
	8. Judicial Powers.	
	9. Privileges and Immunities.	
	10. Merchant Consuls.	
	11. Consular Treaty.	
	12. In Eastern Countries.	
	13. In the Barbary States.	
	14. Military Rank of Consular Officers.	
	15. Salutes.	
XV.	Treaties	65
	1. Historical Development of Treaties.	
	2. Oldest State Treaties.	
	3. Objects of Treaties.	

4.	Peace of Westphalia (1648).	
5.	Treaties of Münster and Osnabrück.	
6.	Peace of Utrecht.	
7.	Peace of Carlowitz.	
8.	The Treaty of Nystadt.	
9.	The Peace of Aix-la-Chapelle.	
10.	The Partitions of Poland.	
11.	The First Peace of Paris and Congress of Vienna.	
12.	The Holy Alliance.	
13.	The Crimean War and the Treaty of Paris in 1856.	
14.	Peace of Prague.	
15.	Franco-Prussian Treaty.	
16.	Treaty of San Stefano and Congress of Berlin.	
17.	Conclusion of Treaties (Germany, Great Britain, France, Belgium, Netherlands, Spain, Italy, Switzerland, United States).	
18.	Kinds of Treaties.	
19.	Treaties Concluded in Times of War.	
20.	Treaties Concluded by Whom.	
21.	Form of Treaty.	
22.	Enforcement of Treaties.	
23.	Interpretation of Treaties.	
24.	Ratification of Treaties.	
25.	Abrogation of Treaties.	
XVI.	Treaties of the United States.....	80
XVII.	Most-Favored-Nation Clause	91
XVIII.	Monroe Doctrine	91
XIX.	International Union for the Protection of Industrial Prop- erty	92
XX.	Passports	94
	1. Authority to Issue.	
	2. Foreign Countries.	
	3. Refusal of Passports.	
XXI.	Extradition	96
XXII.	Asylum	98
	1. Asylum in America.	
	2. Asylum in Legations.	
	3. Asylum in Ships of War.	
	4. Merchant Vessels.	
XXIII.	Arbitration	103
	Mediation.	
XXIV.	Good Offices	106

PART II.

XXV.	War	109
XXVI.	Power to Declare War.....	110
XXVII.	Declaration of War.....	111
	1. The Greeks.	
	2. The Romans.	
	3. The Middle Ages.	
	4. Modern Times.	
	5. Austria Hungary against Servia.	

6.	Germany against Russia.	
7.	Germany against France.	
8.	Great Britain against Germany.	
9.	France against Germany.	
10.	Austria-Hungary against Russia.	
11.	France and Great Britain against Austria-Hungary.	
12.	United States against Germany.	
13.	Great Britain against Turkey.	
14.	France against Turkey.	
XXVIII.	Combatants and Noncombatants.....	119
XXIX.	Enlistment of Aliens	121
XXX.	Recognition of Belligerency.....	126
	1. Powers or Rights.	
	2. Foreign States.	
XXXI.	Suspension of Intercourse.....	129
XXXII.	Confiscation	130
XXXIII.	Public and Private Property of the Enemy.....	132
	1. Rules Governing the Occupation of Hostile Territory.	
	2. Private Property.	
	3. Salaries of Civil Officers.	
	4. Municipal Law Suspended.	
	5. Punishment for Unauthorized Acts.	
	6. Capture and Booty.	
	7. Crimes.	
XXXIV.	Licenses	134
	1. General and Special Licenses.	
	2. Object of License.	
XXXV.	Passports and Safe Conducts.....	135
XXXVI.	Contributions; Réquisitions; Tolls; Taxes.....	136
	1. Rules Governing Levying of Taxes.	
	2. Requisitions Made by Germans in Versailles.	
	3. Conduct of the British in Ile de la Passe.	
XXXVII.	Contracts	138
XXXVIII.	Insurrection—Civil War—Rebellion	139
	1. Civil War.	
	2. Rebellion.	
	3. Treatment of Rebels.	
	4. Loyal and Disloyal Citizens.	
	5. Treatment Accorded to Disloyal Citizens.	
XXXIX.	Spies—War Traitors	141
	1. Spies.	
	2. War Traitors.	
	3. Punishment Commensurate with Danger.	
	4. When not Considered Spies.	
	5. Deserters.	
XL.	Prohibited War Measures.....	146
	1. Prohibited Acts of Belligerents.	
	2. Prohibition Affecting Aerial Warfare.	
	3. Prohibition Affecting Land War.	
XLI.	Prisoners of War.....	148
	1. Treatment of Prisoners of War.	
	2. Maintenance and Discipline of Prisoners of War.	
	3. Right to Service of Prisoners.	
	4. Parole.	
	5. Status of Noncombatants Attached to Armies.	

6.	Information Agencies for Prisoners of War.	
7.	Payment and Liberties Granted to Prisoners of War.	
8.	Alien.	
9.	Reports on Prisoners.	
XLII.	Parole	152
	1. Manner of Giving Paroles.	
	2. Obligation of Parole and Punishment of Transgression.	
XLIII.	Geneva Convention, 1864 (Red Cross)	153
	1. Ambulances and Hospitals.	
	2. Treatment of Sick Soldiers Irrespective of Nationality.	
	3. Emblem.	
	4. Articles Concerning Naval Forces.	
	5. Merchant Vessels.	
	6. Hospital Ships.	
XLIV.	Cartel	159
	1. Exchange of Prisoners.	
	2. Hobson's Heroic Act.	
XLV.	Deceit	160
XLVI.	Sieges and Bombardments	161
XLVII.	Reprisals	162
XLVIII.	Retorsion or Retaliation.....	163
XLIX.	Devastation	164
	L. Conquest	165
	LI. Postliminy	166
	Droit D'Aubaine.	
LII.	Military Jurisdiction	167
	1. Military Jurisdiction Based on Statute and Common Law.	
	2. Humanitarian Aspects of Law of War.	
	3. Scope of Military Necessity.	
	4. Notices of Bombardment.	
	5. Citizens of Hostile Country Considered Enemies.	
	6. Lenient Measures Accorded to Noncombatants.	
	7. Temporary Allegiance of Hostile Citizens.	
	8. War a Means to an End.	
LIII.	Martial Law	170
	1. Objects of Martial Law.	
	2. Scope of Martial Law.	
LIV.	Flags of Truce	172
	1. Inviolability of Flag Bearer.	
	2. Hostilities May Be Suspended.	
	3. Abuse of Flags of Truce.	
	4. Buildings Protected Against Firing.	
	5. Regulations Issued by U. S. Navy Department.	
LV.	Truce and Armistice	174
	1. Truce and Its Effect.	
	2. Time Limits of Truce.	
	3. Rules Governing a Truce.	
	4. Conditions Controlling an Armistice.	
LVI.	Sponsions	180
	Sponsions Require Ratification.	
LVII.	Suspension of Arms	182

LVIII.	Capitulations	182
	1. Authority to Make Capitulations.	
	2. Limitations of Authority.	
	3. Terms of Surrender.	
	4. Capitulations Strictly Observed.	
LIX.	End of War	184

PART III.

LX.	The Term "High Seas".....	186
LXI.	The Marginal Sea	186
LXII.	Neutralization of Canals and Waterways.....	188
	1. Clayton-Bulwer Treaty.	
	2. Suez Canal.	
	3. London Conference of 1885.	
	4. Paris Conference of 1887.	
	5. Corinth Canal.	
	6. Kiel Canal.	
	7. Panama Canal.	
LXIII.	Merchant Vessels	195
	1. Extraterritorial Right.	
	2. Papers of Ships.	
LXIV.	Ships of War	198
	1. Extraterritoriality.	
	2. Limitations of Exemption from Jurisdiction.	
	3. Supplies Free of Duty.	
	4. Asylum.	
LXV.	Nationality of Vessels.....	201
	1. Evidence of the Flag.	
	2. Flags.	
	3. Proof of Nationality.	
	4. Registry.	
LXVI.	Salutes Between Ships and Forts.....	204
	1. Vessels Carrying Sovereigns.	
	2. Salutes Between Ships of War.	
	3. Visits.	
	4. Grades.	
	5. Celebration of Fetes.	
	6. U. S. Regulations Regarding Salutes.	
LXVII.	Privateers or Letters of Marque.....	209
LXVIII.	Blockade in Time of War.....	210
	1. Declaration of Blockade.	
	2. Liability of Neutral Vessels.	
	3. Blockading Operation.	
LXIX.	Contraband of War	213
	1. Absolute Contraband.	
	2. Conditional Contraband.	
	3. Articles Adapted to Form Contraband.	
	4. Articles Not Contraband.	
	5. Additional Articles Not Contraband.	
	6. Absolute Contraband Liable to Capture.	
	7. Vessel Carrying Contraband.	
	8. Vessel Carrying Conditional Contraband.	

LXX.	Visit and Search	217
	1. Definition.	
	2. Right Exercised by Cruiser.	
	3. Duties of Merchant Vessels.	
	4. Mail Steamers and Mails.	
	5. Resistance to Search.	
LXXI.	Transfer of Flag	221
	1. Time in Which to Effect Transfer.	
	2. Valid and Invalid Transfer.	
LXXII.	Capture	222
	1. Vessel Carrying Contraband.	
	2. Condemnation of Vessels.	
	3. Vessel Unaware of War.	
	4. Delivery of Contraband.	
	5. Indemnity.	
LXXIII.	Prize Courts	224
	International Prize Court Convention.	
LXXIV.	Convoy	225
	1. Exemption from Search.	
	2. Neutral Convoy.	
	3. Belligerent Convoy.	
LXXV.	Neutrality	227
	1. American Neutrality Proclamation Aug. 4, 1914.	
	2. Comment by Officers Forbidden.	
	3. Appeal to Americans.	
	4. Angary.	
LXXVI.	Unneutral Service	235
LXXVII.	Hydroaeroplanes	236
	1. Noncontraband Character.	
	2. Hydroaeroplanes are Not War Vessels.	
LXXVIII.	Landing of Submarine Cables.....	239
	1. Cables Under Control of Government.	
	2. Conditions Affecting the Laying of Cables.	
	3. Protection of Submarine Cables.	
	4. Cutting of Cables.	
LXXIX.	Automatic Submarine Contact Mines, and Torpedoes.....	242
LXXX.	Submarines	243
	1. Restraint on Commerce.	
	2. U. S. Proposal for the Conduct of Submarine Warfare.	
	3. Reply of the British Government.	
	4. Reply of the U. S. Department of State, March 30, 1915.	
	5. Reply of the British Government, July 24, 1915.	
LXXXI.	Submarines and Armed Merchantmen.....	249
	1. Submarine as Affecting Armament of Merchantmen.	
	2. Duties Imposed Upon Submarines.	
	3. Laws Relating to Status of Armed Merchant Vessels.	
	4. Relations of Belligerents and Neutrals as Affected by Status of Armed Merchant Vessels.	
LXXXII.	Aerial Warfare	257
	1. The Opinion of the French Government in 1910.	
	2. Jurisdiction.	
LXXXIII.	Wireless Telegraphy	263
LXXXIV.	Declaration of Paris, 1856.....	265
LXXXV.	International Naval Conference.....	266
LXXXVI.	Second Hague Convention.....	279
LXXXVII.	Definitions of Terms Employed in International Law.....	307

INTERNATIONAL LAW

PART I.

INTERNATIONAL LAW.

International law or the law of nations is that system of rules which states acknowledge as binding upon them in their intercourse with one another or in transaction with each other's subjects.

As a science, international law assumed a distinct form in the sixteenth and seventeenth centuries in the works of the great philosophical jurists, of whom Grotius is the most illustrious. His great work, "*De Jure Belli ac Pacis*," was published in 1625. "He claims," says Whewell, "to be the first who had reduced International Law to the form of an art or science."

The law of nations may be considered of three kinds, to wit, **general, conventional, or customary**. The first is **universal**, or established by the general consent of mankind, and binds **all nations**. The **second** is founded on **express** consent, and is not universal, and only binds those nations that have assented to it. The **third** is founded on **tacit** consent, and is only obligatory on those nations who have adopted it.

Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself also to the strict and faithful observance of all those principles, laws, and usages which have obtained **currency** among civilized states, and which have for their object the mitigation of the miseries of war.

No community can be allowed to enjoy the benefit of national character in modern times without submitting to all the duties which that character imposes. A Christian people who exercise sovereign power, who make treaties, maintain diplomatic relations with other states, and who should yet refuse to conduct their military operations according to the usages universally observed by such states, would present a character singularly inconsistent and anomalous."

Lord Talbot declared in a clear opinion, 'that the law of nations, in its **full extent**, was **part of the law of England**.' 'That the act

of Parliament was declaratory;'. . . 'that the law of nations was to be collected from the practice of different nations, and the authority of writers.'

"A question may be raised—Does this customary law of nations, as established in Europe, bind the United States? An affirmative answer to this is warranted by conclusive reasons.

"1. The United States, when a member of the British Empire, were, in this capacity, a party to that law, and not having dissented from it, when they became independent, they are to be considered as having continued a party to it. 2. The common law of England, which was and is in force in each of these States, adopts the law of nations, the positive equally with the natural, as a part of itself. 3. Ever since we have been an independent nation, we have appealed to and acted upon the modern law of nations as understood in Europe—various resolutions of Congress during our revolution, the correspondence of executive officers, the decisions of our courts of admiralty, all recognized this standard. 4. Executive and legislative acts, and the proceedings of our courts, under the present government, speak a similar language. The President's proclamation of neutrality, refers expressly to the modern law of nations, which must necessarily be understood as that prevailing in Europe, and acceded to by this country; and the general voice of our nation, together with the very arguments used against the treaty, accord in the same point. It is indubitable, that the customary law of European nations is as a part of the common law, and, by adoption, that of the United States."

Hamilton, Letters of Camillus, No. 20, Lodge's Hamilton, V. 89; Hamilton's ed., VII. 349.

"Offences committed in the territorial jurisdiction of a nation may be tried and punished there, according to the definitions and penalties of its municipal law, which becomes for the particular purpose the international law of the case."

Report of Mr. Bayard, Sec. of State, Jan. 20, 1887, in the case of Pelletier, charged with attempt at slave trading in Haytian waters, Sen. Ex. Doc. 64, 49 Cong. 2 sess.; Moore, Int. Arbitrations, II. 1799.

"International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and com-

mentators, who, by years of labor, research, and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their author concerning what the law ought to be, but for trustworthy evidence of what the law really is." *Hilton v. Guyot*, 159 U. S. 113, 163, 164, 214, 215.

The law of nations, unlike foreign municipal laws, does not have to be proved as a fact.

The Scotia, 14 Wallace, 170; *The New York* (1899), 175 U. S. 187.

II.

HISTORICAL DEVELOPMENT OF INTERNATIONAL LAW.

1. Introduction.

International law, is closely related to a few leading ethical axioms, and to facts established by the dicta of history. To arrive at a sound understanding of the subject, the natural development of international law must be traced back to the earliest times, so that by the historical antecedents a better understanding of the present day rules and postulates is obtained. The practice of confining investigation to the state systems obtaining as early as the times of the hegemony of Athens, however, according to the writer's views, is not sufficient, and in a concise manner the facts preceding the Greek and Roman state systems will be briefly discussed.

2. The Egyptian Commonwealth.

The Egyptians anxiously avoided travel to distant and unexplored parts, had a "fixed abode," and possessed a civilization of a high order, provoking the cupidity of itinerant, nomadic tribes of the neighborhood eagerly seeking for prey. Egypt was invaded and finally could not escape a foreign yoke in an unsuccessful war against the Assyrians and Persians. Previously, however, under its twelfth and eighteenth dynasties, Egypt could point to remarkable war successes, defeating the attacks of nomadic peoples without, however, expanding Egyptian territory, but requiring booty, imposing tributes, or forcing regal supremacy over foreign potentates. The renaissance of Egyptian studies and the scientific basis conceded to Egyptology have formed the starting point for prominent investigators in determining the beginning of international law.

3. International Relations of Egypt.

The foreign relations of the Egyptians were in no manner hostile to neighboring communities. Within this time falls the example of a state treaty, in the form of a peace treaty between Rameses II and the Khita ruler, which marked the conclusion of the Assyrian War, and which stipulated eternal peace under the protection of the mutual state gods and an alliance against the enemies of the contracting parties. The treaty also stipulated extradition of criminals on condition that severe punishment be renounced.

The commercial relations of Egypt with foreign peoples were important, presumably in view of the slave trade, as evidenced by the reference in the Bible to the selling of Joseph to Egypt. Contemporaneously with slavery, trade in luxuries, such as ornaments, jewels, incense, etc., was carried on.

The Phenicians entertained commercial relations with Lower Egypt and the ports of the Nile Delta, where numerous settlements of Greek origin existed. Incidentally it may be remarked that with the appearance of the papyrus plant in the Nile Delta the first writing material was obtained. Egyptian kings at a later period fostered trade with foreigners by "privileges."

4. The Phenicians.

Phenician civilization, reaching its zenith in the middle of the second millennium, was closely related to Egyptian civilization in political respects. The Phenicians were the first and most powerful among the navigating and colonizing peoples of ancient times until outclassed by the Greeks. They dominated the trade routes between their seaports and the mouth of the Nile and the valleys of the Euphrates and the Tigris. Their commercial supremacy was responsible for their share in the development of international relations, and to them is ascribed the authorship of changing a barter trade to a purchasing trade, based on valuable metal as exchanging means. The Phenicians permitted the influx of citizens of other nations, granting them the right to carry on commerce in their seaports. The Chaldeans, Assyrians, and Jews carried on commerce in Sidon and Tyre, whereto Plato repaired to learn their art of business. It is safe to assume that the establishment of trade routes was protected by treaties with interior Asiatic rulers or with the heads of Arabic tribes, creating certain fundamental rules of international intercourse between their colonies and Carthage. The decisive battle with Rome finally decided the political position of the Semitic world.

5. The Babylonians and Assyrians.

Babylon constituted an important market place for the sea trade of the Indian Ocean and an important crossing point for the land trade of the Phenicians. The Babylonians possessed an advanced law system, based on carefully recorded documents of treaties. Numerous inscriptions on stones excavated in the nineteenth century attest to the valorous deeds of the kings and to the principal contents of alliances with neighboring peoples. Babylon was the predecessor, and consequently a servant, of Nineveh. The relation of these two metropolises alternately appears as an international relation and as a mutual subjugation.

The origin of the Assyrian Empire dates back to the period between the division of the Jewish Commonwealth and the rise of the Persians. The importance of the Assyrians in the gradual development of international civilization cannot be easily estimated. They are characterized as a murderous people, insidious, barbarous, and given to excesses. Ancient documents establish the fact that the old oriental rulers considered other rulers inferior.

6. The Persian Empire.

The Persian Empire, the existence of which dates from the middle of the sixth century B. C., hardly extended over a space of two centuries. The comparatively easy conquests under Cyrus and Cambyses, and the absence of serious resistance were responsible for the tolerance and leniency against the vanquished, although the Persian kings, in attacking Greece, entertained the idea of world domination. The knowledge which is possessed of treaties, intervention, and commercial relations of the Persian epoch is largely obtained from Greek sources and is only of ancillary importance. Of greater interest is the fact that a large number of Greeks volunteered their services to the Persian kings and satraps as generals, artists, politicians, writers, etc.

7. The Israelites.

The essential difference between the Jewish state and other nations is largely based on religion. The laws of the national god Jehovah remained immutable and were interpreted by the priests. After the settlement in Canaan they lacked the unity of priestly, judicial, and executive power, and instead of being classed as a state they may be more properly designated as an aggregation of tribes.

The duty of common defense existed only in times of danger. The formation of a kingdom, embracing twelve tribes, marked the second important epoch, although extending over a comparatively short period of two hundred years. In the absence of a standing army, in an emergency the militia was summoned and forced into action. The laws of war clearly disclose the barbarism of the power of the priest, which manifested itself in the treatment accorded to a vanquished enemy. No document in writing has caused such far reaching results in the development of international community life than the Old Testament. The Decalogue forms the constitution of the civilized world and the basis of moral, practical education. The law of domestic relations of the medieval period was influenced by Mosaic tenets.

8. The Hellenic World.

None of the older or more recent civilized peoples manifested such a cosmopolitan, universal, and natural disposition in the diversity of their formation as the Hellenes, apparently favored by the formation of the soil which they occupied. The cult of the Greeks did not possess that localism peculiar to the cult of the Asiatic people. The Hellenes possessed the political intuition to form free states independent of the doctrines of theocracy. They possessed a keen appreciation for foreign countries, for the predominance of their national spirit, and for the inability to accept the yoke of a conqueror. It is significant that Athens as a community reached the decision to seek refuge behind wooden walls rather than to submit to the power of the approaching Persians.

9. The International Relations of the Hellenes.

It is impossible to refer to a Hellenic international law in the absence of a plurality of similar states with unlimited freedom, having a constitution, and the recognition of a common system of laws applicable to their mutual foreign relations. The idea of complete equality of single states in a confederation and the complete fusion of the particular interests for the purpose of unitary, non-archival conduct of diplomacy, were entirely lacking, thus precluding the possibility of organizing foreign affairs. The democracies effectively introduced by Pericles could not be placed on the same plane with the laws of other states predicated on aristocratic principles. Athens despised Spartan aristocracy, and Sparta feared the attraction of democratic Athens.

The Hellenic formation of the Confederation was effected either for the purpose of prosecuting a war or of granting rights of sojourn to citizens of foreign communities, termed "Isopolity." Of highest political importance during the fifth century was the Hellenic Federation, based on the sea power of Athens, whereby the latter exercised a lasting influence. This council of states, however, was suppressed by the amphictyony of the Delphic Apollo, which in the later history of the Hellenes played a not unimportant role. As regards international relations, it is important to note that the Amphictyonian Council considered itself as a forum to supervise the observance of international principles and to punish contraventions thereof, although the historical opposition between Athens and Sparta did not permit this function to be put into full effect.

10. War and Peace.

War combined with the love of liberty a retaliating idea of right, as evidenced by the triple form of battle, on the field, on water, and by siege. Prior to the Trojan War an envoy was sent with the request to obtain satisfaction from the Trojan violators of the right of hospitality. It was generally assumed that the fortunes of war settled the dispute of right and wrong, from which emanated the often transgressed, but in substance adhered to, postulate of a systematic declaration of war to hold the adversary to account when refusing to do justice voluntarily. Even during war time the peaceable means of subsequent understanding were not cut off. Messengers and heralds enjoyed protection by virtue of a special quasi diplomatic duty. The killing of non-combatants appealing to the mercy of the victors was disproved and contrary to tradition. The fate of prisoners of war was different according to the circumstances. Ordinarily they had to pay off in servitude the debt of their own state. Cities conquered by storm were at the mercy of the victor. The conclusion of peace treaties was, in effect, in accordance with stipulations in the Constitution of Solon, who fixed the duration for ten years.

11. The Right of Foreigners in Hellas.

The Hellenes were predominantly friendly to foreigners. The conceptions of hospitality reentered in their views of commercial and political relations, and were responsible for the rights accorded to foreigners in the form of proxeni granting national protection. Even slaves enjoyed certain rights in Athens, being protected against

arbitrary killing and mistreatment. The cosmopolitan character of Athens is furthermore evidenced by the right of domicile of the Metics, who at that time numbered about forty-five thousand persons. In conclusion it may be stated that the right of foreigners in Athens reached a high state of development.

12. Macedonia.

The Macedonian rule represents, even before the war against Persia, the only example of a confederation of international formation in which the distinction between several nations, between Greeks and barbarians, was eliminated in political and military respects.

13. The Roman State.

Rome accepted, after the conquest of Southern Italy and Sicily and the conquering expeditions in an easterly direction, the cultural inheritance of the Greeks. The Romans may be considered as a legal and national people. The formation of their laws and constitution was predicated first on a regal and then on a republican foundation.

Roman law, from the viewpoint of civilization, contains three distinct branches: 1, private law; 2, public law, and 3, a branch which may be designated as international law, in a narrow meaning. The private law is a pure product of practical legal knowledge and juristical experience, adapted to be utilized as international private law. The public law was based, of course, on the imperial idea, and the attraction of Caesarism was responsible for the ability of Roman jurisprudence to survive the destruction of the Roman Empire.

14. International Relations of the Romans.

In international relations changes occurred only after Rome entered into contact with the Gauls and with other peoples differing in customs and manners from the Roman-Latin type. The second period falls within the time of the Punic Wars. The subjugation of provinces was accompanied by the disappearance of moderation against other nations, and national consciousness of political superiority gradually developed, ripening into a desire for general hegemony.

Special offices were provided for the purpose of legal intercourse with foreign countries, and especially the *fetiales* exercised a whole-

some influence when tumultuous public assemblies seemed to contravene the course of prudent foreign politics. *

The rules relating to foreign relations and subject to the jurisdiction of the *fetiales* are designated "*jus fetiale*." The *jus fetiale*, in addition to declarations of war and conclusion of treaties, embraces the extradition of criminals who violated international law, the maintenance of peace by supervising treaty rights and stipulations, and the observance of the tradition relating to envoys.

The centumviral court may be considered an organ of international law. Its jurisdiction and procedure, however, are not certain. The court having jurisdiction in cases arising out of international private law was constituted by the Praetor Peregrinus in contrast to the Praetor Urbanus, having jurisdiction in controversies between citizens.

According to the Roman conception of right, war was decreed by divine order, and a test for determining the justice of war was whether there was sufficient cause and whether the regular declaration of war followed. Among the causes for prosecuting a war, violation of territory combined with the appropriation of cattle herds or slaves, and violation of envoys were considered pre-eminent. Breach of a treaty or a violation thereof, and alliances against the Roman people or their confederates were also acknowledged as sufficient cause for war. The exact form of declaration of war required its execution by the *fetiales*.

15. Treaties.

Treaties designated as "*foedus*" were under the jurisdiction of the so-called "*recuperators*." The method of concluding treaties was not materially different from that observed today, and it required the ratification of the Senate and of the people. At no time have the Romans denied the legally binding character of state treaties, although they also took care to provide guaranties.

16. The *Jus Gentium* of the Romans.

The term "*jus gentium*," especially in a narrow sense, was applied to an international order for the foreign intercourse of the state, and was of national, Roman origin. The *jus naturale* lacked, for the corresponding organs of the Romans, direct application, but gradually acquired importance, and they were finally considered as identical.

17. Medieval States.

The modern state established by the Teutonic nations has finally associated a state with territory marked by certain geographical boundaries. States recognized by modern international law were established in medieval times after the fall of the Western Empire. The influence of the Roman Empire, however, survived and the German Empire was believed to be a successor of the old Roman state.

International law of the Middle Ages was greatly influenced by the Church. The commerce between numerous independent communities assumed an international character. Italy became the birthplace of medieval European right of commerce based on custom law, which spread in a short time over the whole of Europe. Numerous formations of commercial law took place which extended beyond the scope of Roman civil law.

18. Maritime Law.

Among the sources of maritime law four groups, on a geographical basis, may be distinguished:

1. The East Byzantine Group, including the collection of so-called older maritime laws. The jurisdiction of these laws extended from the outbreak of the Sicilian wars to the fifteenth century, and then, on a Franco-Germanic basis, includes the Assizes of Jerusalem, beginning with Godfrey of Bouillon, as far as they relate to maritime rules.

2. The Central Italian Group, in which the oldest maritime law is that of the *Tabula Amalfitana*, of considerable age, and that of Pisa, which are followed by several other less important codes. These codes, however, were rejected by Genoa, which later on officially compiled the maritime doctrines. A comparatively independent position was occupied by the cities on the Adriatic, with Venice as their leader. The oldest maritime law of the Venetians was established at the beginning of the thirteenth century, which was afterwards supplemented and extended.

3. The sea laws of Montpellier, Arles, Marseilles, and especially the consular rules of Valencia. A prior collection of maritime customs originated about the middle of the fourteenth century in Barcelona, written presumably by a clerk of a maritime court and of interest as indicating the general development of international law.

4. The next group embraces the North French-Dutch-Hanseatic laws. They are headed by the decisions of the maritime court of

Oleron, which spread over the whole of western and northern Europe, and presumably originated in the twelfth century. The right in the Baltic Sea is determined by the laws of Wisbuy, which substituted the maritime laws of Oleron and the old northern maritime customs. The development of the northern maritime law is intimately associated with the history of the Hanseatic League.

A further source of maritime law is the *Consolato del Mare*, which is a gradual collection of the maritime customs of the cities of the Mediterranean.

The source of maritime law no doubt of more ancient origin is the Rhodian law, a code set up by the inhabitants of the island of Rhodes after having acquired naval supremacy. Except as to the article on jettison, nothing is extant at the present time.

19. Grotius.

In line with the gradual development of nations, a general revolt of the human mind against authority took place. The questions concerning the state and its administration received close attention, giving birth to politics. Together with politics, jurisprudence was eagerly studied, as evidenced by the writers of the time. To the publications of these writers the student of international law will give importance in establishing the rules of international law. The most noted writer, Hugo Grotius—designated as the father of international law—has clearly defined international law and its sources as the law “which obtains between peoples and their rulers, springing from nature itself or instituted by laws divine, or by custom and silent agreement.”

III.

STATES.

1. State Defined.

The state, or political society, in its broadest sense, may be defined as an association of human beings established for the attainment of certain ends by certain means. For the purpose of international law a state may be defined to be a people having a fixed abode, united by common laws and customs into a body politic, and exercising, through the agency of an organized government, control over all persons and things within its boundaries, and possessing

certain powers to establish or modify international relations with other political societies. A state is distinguished from other societies by its functions; the primary function being defense against external enemies and the maintenance of peaceable and orderly conditions within its boundaries, the subsidiary functions being legislation and taxation. Thus, a voluntary association of outlaws (pirates) of other societies, of nomadic hordes lacking a fixed abode, and the like cannot be properly designated as a state.

2. Sovereignty and Independence.

Sovereignty is the supreme power by which a state is governed, and this power may be exercised internally or externally.

Independence, in a negative sense, signifies the absence of any control or dictation exercised by other states.

Sovereignty and independence can not always be used interchangeably, as there may be different degrees of sovereignty, while independence does not permit of grading. A state is either independent or dependent, whereas international law recognizes a state to be sovereign when it is independent of every other state in the exercise of its international rights, and states having an existence not entirely independent of other states are recognized as semi-sovereign.

States may be classified as **simple** states and **composite** states.

Simple states are distinguished again as **single** states and **personal unions**. Simple states are such as have one supreme government and exert a single will either by a sovereign ruler, by a representative assembly, or by a popular body. The possession of colonies having more or less self-governing powers, or the subdivision of the state for purposes of administration is immaterial. The simple state may be **single**, constituting an entity separate and distinct from another state, or it may be connected with another state by a so-called **personal union**. The latter designates two separate states whose identities never merge, but who have the same ruling monarch. The best example of a personal union is that of Great Britain and Hanover during 1714-1837.

A state is designated as **composite** when comprising two or more states, and in accordance with the nature of the act creating the union, they are classed as **real unions**, **confederacies**, and **federal unions**.

A **real union** comprises a plurality of states ruled by the same monarch and united by an express agreement. Austria-Hungary and Sweden and Norway (the latter two before their separation) are instances of real unions.

A **confederation** is a permanent association of states exercising in common the prerogatives of sovereignty for the general advantage. It differs from a league of nations not only by the permanence of existence, but by the possession of a common organization constituting the agency for carrying into effect the will of the component states. The states retain their external sovereignty to a greater or less extent, and constitute a band of states (*Staatenbund*) as distinguished from a banded state (*Bundesstaat*).

A **federal union** exists when states are united under a central government exercising national sovereignty in foreign matters. The act effecting the union is called the constitution. Instances of a federal union are the United States and Switzerland.

3. Neutralized States.

In contradistinction to a neutral state, which holds aloof from countries in a state of war, neutralized states are such as are officially created by convention. These states can not participate in a war entered into by neighboring states and in return be secured against attack. The Treaty of Paris (1815) and the Treaty of Turin (1860) neutralized Switzerland and portions of Savoy. The Treaties of 1831 and 1839 neutralized Belgium, recognizing her as an "independent and perpetually neutral state, bound to observe the same neutrality with reference to other states."

4. Semi-Sovereign States.

Semi-sovereign states are those subject to the authority of another state in external matters. The dominant state is called the suzerain and the relation is termed a suzerainty. The subject state may be represented in foreign matters by the suzerain state or may maintain diplomatic relations subject to the control of the paramount state. Instances of semi-sovereign states are Egypt, under the suzerainty of the Ottoman Porte, and formerly Bulgaria, by the Treaty of Berlin (1878) being constituted an autonomous and tributary principality under the suzerainty of the Sultan.

5. Protected States.

Protected states are those having semi-sovereignty, and the office of the suzerain is termed a protectorate. These terms are loosely applied, as evidenced by the French protectorate Indo-China and other territories, which may properly be classed as colonies and

which are, in fact, under the jurisdiction of the Colonial Minister. Protected states are the Republics of Andorra, San Marino, and Monaco. Protectorates are exercised by a state of European civilization over one of other civilization. Thus, France exercises a protectorate over Tunis, and similarly, England over Zanzibar. The distinguishing feature between a protected state and a protectorate lies in the fact that in the former the territorial sovereignty is divided between it and the protecting state, while in the protectorate the territorial sovereignty is in abeyance.

IV.

STATE AND GOVERNMENT.

The state and the government, although commonly accepted as synonymous terms, in reality are different conceptions, the existence of one being independent of that of the other. The overthrow of the government does not mean concurrent termination of a state; on the other hand, the state can not be recognized until a stable government has been inaugurated.

1. Kinds of Government.

An examination of the governments of the various states reveals certain distinguishing features which characterize one government from another and which permit of a classification in accordance with the limits or absence of limits controlling the power of the government.

Governments are distinguished as **constitutional** and as **absolute** governments, the former possessing a sovereignty limited and restricted by the constitution. The constitution either may be enacted, as in the case of the United States Constitution, or it may be partly written and partly unwritten, as in Great Britain, or it may be contained in the municipal law. An absolute government, on the other hand, possesses no limitations as regards the power which the chief executive may wield. Such governments have no representative institutions and provide no guaranties for the liberties, duties, and privileges of citizenship.

Governments may be further classified as a **monarchy**, an **aristocracy**, a **democracy**, or a **republic**.

A **monarchy** is characterized by the concentration of the sovereign

powers in a single person. The authority exercised by the monarch may be restricted by commensurate representative institutions, as is the case in England, where Parliament has reduced the importance of the king to the condition of a hereditary executive.

An aristocracy is a government wherein the ruling powers are exercised by a privileged class.

A democracy is a government in which the people possess sovereign powers and exercise the same directly.

A republic, akin to a democracy, is a government in which the people have the sovereign powers and exercise the same indirectly by electing representatives therefor.

2. De Facto and De Jure Governments.

Governments are distinguished as de facto and de jure governments. A de facto government, akin to a de jure government is, to all intents and purposes, the same lacking, however, formal recognition. Adherents of a de facto government against the lawful government cannot be prosecuted as traitors, and history is replete with cases of obligations entered into by a de facto government and subsequently recognized by the lawfully constituted authorities.

The status of foreigners during a change of governments remains practically unaffected, it being their duty to hold aloof from interference in political matters and to submit to the authority exercising jurisdiction over the respective territory. In the absence of intermeddling in internal affairs their lives and property are under protection, and no ex post facto laws which, promulgated by the authorities then in power, subject property to forfeiture for acts committed under the approval of the preceding government, will be recognized. De facto governments may come into existence by the removal of the lawful authorities or by the separation of a portion of a country and the establishment of an independent government.

3. Military Occupation.

In the case of military occupation of a country, the invading forces exercise the prerogatives of a legally constituted authority, suspending ipso facto the laws in force prior to the occupation, and forcing the inhabitants to a temporary allegiance to the invading forces. This status prevails until a treaty of peace or the withdrawal of the forces is effected. The civil government existing prior to the occupation is substituted by the temporary government set up by the conquering forces, which have a right to make prepa-

rations for securing the conquests by the erection of fortifications, and to levy taxes to defray the expenses for maintaining the conquered territory.

4. Confederate Government.

In the case of the Confederate Government, no recognition was accorded thereto by any civilized nation, nor was a treaty concluded with it. The Government of the Confederate States was considered as the military representative of the insurrection against the authority of the United States. The inhabitants of the territory controlled by the states were considered enemies, and it devolved upon them as a duty to obey the authorities for the sake of preserving civil order. Obligations which are incurred, even though promoting the ends of the unlawful government, may be enforced after the restoration of peace whenever of a just character.

5. Rights and Duties of States.

A state is presumed to possess rights and duties, and consequently may possess property and have the right to execute certain acts necessary for preserving and developing its existence and therewith its independence. The holding of property, however, cannot be in violation of rights of others. The acts which a state may inaugurate include the rights of organization to take certain measures for the purpose of increasing its prosperity and strength and to occupy unappropriated territory and to incorporate new provinces with the genuine consent of the inhabitants and without violation of the superior rights of another state.

Nations are presumed to be equal, irrespective of size and strength. The relative power of sovereign states for the purpose of international law is of no significance, each state being possessed of the same rights and the same duties and being bound to observe the same obligations. The relative magnitude being immaterial, it follows that what is lawful for one nation is considered lawful for another. States have the right to acquire territory and other kinds of property to be held in absolute ownership.

6. Recognition of States.

Recognition is accorded to such states which have come into being, and this is a condition precedent to being received into the family of nations. The prerogatives and attributes of sovereignty, however, are independent of recognition, but the exercise thereof can take place only after formal recognition.

Recognition is either express or implied. A written or oral declaration may constitute the act of recognition, or it may be implied by conduct, as evidenced by the entry into negotiations, the despatching and receiving of diplomatic agents, or the granting of exequaturs to consuls. Recognition can be accorded only by a recognized nation, as a *de facto* government could not bestow a character upon a new state which it does not possess itself. Recognition, although in exceptional cases, accorded conditionally, as a general rule is absolute and irrevocable. History furnishes many examples of recognition accorded to newly formed states, and attention is called, by way of reference, to the recognition of the Republic of Colombia in 1822 by receiving the *chargé d'affaires*. Mexico was formally recognized together with the Republics of Argentine and Chile in 1823 by the appointment of a minister to that country. In a similar manner Peru and other South American countries received recognition by the United States.

7. Recognition of Belligerency.

The recognition of a state of belligerency is a question of fact to be decided by the degree of force and the mass of population engaged therein. The mere existence of hostilities between two nations does not necessarily constitute this act as a legal state of war, but merely classifies it as a *de facto* war, such as existed between France and San Domingo. The recognition of belligerency involves certain rights acquired by a belligerent, such as the right of search, visitation, seizure of contraband, and the right of blockade. The recognition of a state as a belligerent power does not necessarily imply its recognition as an independent power, but accords thereto the rights and duties of an independent state for purposes relating to the war.

The recognition of a state is sometimes caused by the necessity of enabling intercourse with communities; however, the mere fact of intercourse does not in itself constitute proper recognition, but in such cases it is proper to determine the intention. The surrender, for instance, of an ordinary criminal to a *de facto* government does not necessarily constitute recognition; but, as previously stated, the despatch of diplomatic officials and similar acts constitute recognition by conduct. The question of according recognition, as established by numerous cases, is determined by the executive, sometimes with the aid and cooperation of Congress, but more often on his own responsibility.

8. Changes of Government or Territory.

The continuity of states is not affected by territorial changes, neither do changes in population have any bearing on the existence of a state. Changes in the government or internal matters of a state ordinarily do not alter the international purview of the state. The transformation of a republic into a monarchy and vice versa do not create any changes whereby the foreign affairs of the nation would be affected but rights and obligations remain unaffected and unaltered by such internal changes.

V.

ACQUISITION AND LOSS OF SOVEREIGNTY.

1. Acquisition of Title to Territory.

The title to property may be acquired by occupation. In the case of territories, such occupation depends upon discovery, user, and settlement of the territory not claimed by any civilized state. The mere act of discovery in itself does not confer any right of possession, but the other elements of user or settlement must be present. In the case of America, European nations, in dividing the immense territory, agreed on the principle that discovery vested the title in the government under whose authority or by whose subjects the discovery was made. This principle, however, is modified by the necessity that possession must follow discovery. This is now definitely agreed upon and recognized by all civilized states.

The territory discovered and settled upon must also be vacant, either by having been unoccupied or by having been abandoned by the previous occupant. In the former case, title is acquired by occupation; in the latter case, title is acquired by consent either expressly granted by the prior occupant or impliedly obtained by the absence of the dispute of possession. The title acquired by discovery, and subsequently improved by a title by settlement, the perfect title of the occupant is recognized, as is well settled in international law.

The extension of territory given by discovery is regulated by certain rules which grew out of the practice observed by European nations. The taking of possession of an extensive sea coast confers possession from the interior country to the source of the rivers which flow to the coast, including the branches of the river and the

country covered thereby. A European nation takes possession of a portion of a continent and subsequently another nation takes possession at some distance from the territory occupied by the first nation; the boundary is determined by the middle distance.

The third principle embraces the undisputable right to any portion of territory acquired by discovery and user even where purchases are made or grants obtained from the natives occupying the territory.

2. Rules for Establishing Title.

The rules promulgated by civilized nations are the result of natural development. Priority of itself gave a right to occupy discovered territory, the occupation to be effected within reasonable time after the discovery. This right was not limited to the spot actually occupied, but extended rather to a section of country drained by rivers. In later years, however, the tendency prevailed to show more substantial grounds of title than was hitherto deemed sufficient. It finally culminated in the declaration adopted in the Berlin Conference of 1885, in which Austria, Belgium, Denmark, France, Germany, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, Turkey, and the United States agreed that "any power which henceforth takes possession of a tract of land on the coasts of the African continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire effect, as well as the power which assumes a protectorate there, shall accompany the respective act with a notification thereof addressed to the other signatory powers of the present act, in order to enable them, if need be, to make good any claims of their own." The theory of spheres of influence and the theory or practice of the "Hinterland" idea are not introduced into international municipal law.

3. Modes of Acquiring Title.

Title to territory may also be acquired by accretion where, for instance, a gradual formation of an island or dry land takes place. Other modes of acquiring titles are by cession, the document stipulating such cession, the effects of such cession, in addition to the rules of international and municipal law which are applicable. Cession takes place without the consent of the population, which is only necessary whenever title by conquest is no longer recognized. Title by conquest is acquired if, after occupation by military forces, the occupied territory is ceded by treaty. The cession of such territory does not operate to disturb the relations of the inhab-

itants with respect to one another, but severs the ties with the former government and transfers allegiance to the new sovereign.

Title is also acquired by prescription, and arises out of a long continued possession either where no original proprietary right can be shown or where adverse possession has continued without opposition being raised by the rightful owner. The length of time of occupation is not definitely established, although a period of fifteen years could be assumed as a sufficiently long possession to vest a title (For Rel. 1896, 254). The title, in order to permit acquisition of title by occupation, must be clearly shown by an express act or by some kind of manifestation.

That a revolution may establish a new sovereignty is frequently set forth by historical facts. Internal development may also cause the acquisition of sovereign rights, as evidenced by Japan, which, after acknowledging the postulates of international law, was recognized as a law governed nation.

VI.

NATIONAL JURISDICTION.

National jurisdiction is exercised in the territory constituting a state, which includes land and water. If a river forms a boundary between two states, it is the common property of both states and accessible for navigation to every country.

As regards straits, the "Institut de Droit International" has fixed certain rules according to which the bordering states exercise sovereignty to the middle line, while straits having shores belonging to one state form part of the territorial borders of such states. Straits serving as a passage from one free sea to another cannot be closed. The Dardanelles, by various treaties concluded with Turkey, were opened to navigation by commercial vessels. No stipulation, however, was made as regards men-of-war. In a treaty concluded at London in 1841, Turkey expressly prohibited the entrance of foreign war vessels into the Dardanelles and the Bosphorus.

1. Jurisdiction Over Vessels.

In connection with the national jurisdiction of states, the status of ships may be considered, which, to all intents and purposes, may be considered a part of the territory of the nation under whose flag they sail. It therefore follows that an offense perpetrated on board a man-of-war on the high seas is subject to the jurisdiction of the nation to whom the ship belongs. This view is accepted for public

and private vessels of every nation on the high seas and without the territorial limits of another state. The crew of a ship is therefore not subject to the criminal laws and procedure of another nation, and any attempt to enforce jurisdiction in contravention of the rules of international law should be staunchly resisted. Jurisdiction is not acquired over a foreign vessel where a crime or a tort has been committed on the high seas, and the vessel subsequently enters the port of a nation whose citizen has suffered by reason of said crime or tort. The rules with respect to regularly chartered vessels, of course, are not applicable to vessels lacking in national character.

The jurisdiction of a nation in its own territory is absolute, and is not modified by any limitations imposed from without as being in contravention of the sovereignty exercised by the state. A vessel in the harbor or port of a country within the territorial limits thereof, is subject to its laws and procedure. A vessel, therefore, of French nationality in the harbor of New York cannot be seized, for instance, by a Spanish ship under any pretext, as this act would constitute an infringement of the sovereign rights of the United States.

2. Limitations of Jurisdiction.

Limitations of national jurisdiction have been created by treaties neutralizing a part of the whole of the state or particular bodies or streams of water. Further limitations of jurisdiction are given where an act of an individual under the authority of his government, in times of war and dictated by necessity, is committed, and such act is cognizable in accordance with the rules and practices of international law. It is otherwise, however, if the act is not done in times of war and forced by necessity.

3. Status of Aliens.

The status of citizens of a foreign country residing in another is practically identical with that of a native; they are subject to the laws and judicial procedure of that country.

In the absence of partiality and miscarriage of justice, redress to the diplomatic representatives of their country does not lie.

VII.

EXEMPTION FROM TERRITORIAL JURISDICTION.

Territorial jurisdiction is not exercised in certain cases. Thus, the person of a sovereign is exempt from arrest or detention within a foreign territory; the same consideration is extended to foreign ministers.

Jurisdiction is also waived where a sovereign permits the passage of troops of a foreign nation through his territory.

Vessels of war are subject only to the law of the state under whose flag they sail. This exemption from local jurisdiction is accorded to such vessels even when sojourning in the ports or territorial waters of a foreign state.

1. Extraterritorial Jurisdiction.

The diversities of the laws of the non-European countries are responsible for the enforcement of an exemption from the operation of the local law. By treaties consuls exercise jurisdiction over citizens of their country residing in a non-European country. The powers of consuls are usually rather broad, but are more of a mediatory nature and are exercised only in such cases where the return of citizens to their home country cannot be awaited to obtain adjudication of the matter at issue. Such extraterritorial jurisdiction is exercised in Turkey, China, and other countries.

2. The Right of Asylum.

In the exercise of sovereignty, the state has the right to determine under what circumstances and to what persons asylum is granted, either as a matter of permanent residence or of temporary sojourn. It is the common practice of states to grant refuge to political offenders exiled from the state of nativity. The practice of asylum is not sanctioned by international law, but is traced back to the consent of the state in which it is sought to be maintained.

Further discussion of this subject is made elsewhere in this book.

VIII.

CITIZENSHIP.

The state, having been defined as an association of human beings, the latter form the component units and as such are called subjects or citizens. The terms subject and citizen are synonymous in international law and apply to all owing allegiance to the state.

The Constitution of the United States, as originally adopted, uses the words "citizen of the United States" and "natural-born citizen of the United States." By the original Constitution every Representative in Congress is required to have been "seven years a citizen of the United States" and every Senator to have been "nine

years a citizen of the United States"; and "no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President." The fourteenth article of amendment, besides declaring that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," also declares that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." And the fifteenth article of amendment declares that "the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude."

A citizen or subject may be defined as an individual member of a state owing the duty of allegiance in return for the protection received.

The Constitution nowhere defined the meaning of these words, either by way of inclusion or of exclusion, except in so far as this is done by the affirmative declaration that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." In this respect, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. (Per Mr. Justice Gray in *United States v. Wong Kim Ark*, 1897, 169 U. S., 649, 654.)

Additions might always be made to the citizenship of the United States in two ways: first, by birth, and second, by naturalization. This is apparent from the Constitution itself, for it provides that "no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President," and that Congress shall have power "to establish a uniform rule of naturalization." Thus new citizens may be born or they may be created by naturalization. (*Minor v. Happersett*, 1874, 21 Wall. 162, 167, Mr. Chief Just. Waite).

Citizenship by birth may exist (1) by reason of birth in a particular place (*jure soli*). All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States. (Rev. Stats. §1992; sec. 1, Civil Rights Act, April 9, 1866, 14 St. 27.)

(2) By reason of the nationality of the parents (*jure sanguinis*). By section 1993 of the Revised Statutes of the United States, incorporating the provisions of the act of February 10, 1855, "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose father never resided in the United States." *Ludlam v. Ludlam*, 26 N. Y. 356; *Albany v. Derby*, 30 Vt. 718; *Ware v. Wisner*, 50 Fed. Rep. 310).

IX.

NATURALIZATION.

Citizenship may be acquired by renouncing allegiance to the state of nativity and acquiring allegiance in a new state.

"The inadequacy of existing legislation touching citizenship and naturalization demands your consideration. While recognizing the right of expatriation, no statutory provision exists providing means for renouncing citizenship by an American citizen, native-born or naturalized, nor for terminating and vacating an improper acquisition of citizenship. Even a fraudulent decree of naturalization cannot now be canceled. The privilege and franchise of American citizenship should be granted with care, and extended to those only who intend in good faith to assume its duties and responsibilities when attaining its privileges and benefits; it should be withheld from those who merely go through the forms of naturalization with the intent of escaping the duties of their original allegiance without taking upon themselves those of their new status, or who may acquire the rights of American citizenship for no other than a hostile purpose towards their original governments. These evils have had many flagrant illustrations. I regard with favor the suggestion put forth by one of my predecessors, that provision be made for a central bureau of record of the decrees of naturalization granted by the various courts throughout the United States now invested with that power."

(President Cleveland, annual message, Dec. 8, 1885, For. Rel. 1885, XV.)

"I renew the recommendation of my last annual message, that existing legislation concerning citizenship and naturalization be revised. We have treaties with many states providing

for the renunciation of citizenship by naturalized aliens, but no statute is found to give effect to such engagements, nor any which provides a needed central bureau for the registration of naturalized citizens." (President Cleveland, annual message, Dec. 6, 1886, For. Rel. 1886, XI.)

NATURALIZATION LAWS.

Act of June 29, 1906 (34 Stat. L., Part 1, p. 596), as amended in sections 16, 17, and 19 by the act of Congress approved March 4, 1909 (35 Stat. L., Part 1, p. 1102); in section 13 by the act of Congress approved June 25, 1910 (36 Stat. L., Part 1, p. 830); by the act of Congress approved March 4, 1913 (37 Stat. L., Part 1, p. 736), creating the Department of Labor; and by the act of Congress approved May 9, 1918 (Public, No. 144, 65th Cong., 2d sess.)

Sec. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified—State, Territorial, and Federal—shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said bureau.

1. Requirements for Acquiring Citizenship.

Sec. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior

to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: Provided, however, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Second. Not less than two years nor more than seven years after he had made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth: the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife, and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition; Provided, That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.....

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion to be admitted as a citizen of the United States.....

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

2. Declaration of Intention.

The status of aliens having made the declaration of intention to become citizens of the United States is next to be considered. Under the law an alien who desires to become a citizen of the United States must declare on oath before the clerk of a court authorized to naturalize aliens that it is his intention to become a citizen of the United States and renounce all other allegiance, and that he intends to permanently reside in the United States, such declaration being made at least two years prior to his final application for admission to citizenship. (Sec. 4, par. 1, Sec. 27, form of declaration, approved June 29, 1906.)

The following paragraph in the declaration must be taken into consideration: "It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to . . . of which I am now a citizen (subject)."

It is true that the government does not accord a declarant the protection accorded a citizen for the reason that the citizenship of a declarant is in a formative state; and in order that it may be completed, it is necessary that he reside continuously in the United States for five years. The government does not owe protection to one who has declared his intention and by mere chance goes abroad for a short period, for the reason that his first paper (declaration) becomes null and void; he has destroyed the continuance of his residence. By his declaration of citizenship he "renounced forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty," and consequently he expatriated himself. He is a man without nationality. The United States laws have required him, under oath, to renounce allegiance to his former government, expatriating him, and still these laws are not in a position to give him the rights of a citizen. Furthermore, in accordance with the law, he is denationalized. For this reason foreign governments do not recognize the declaration of intention to become

American citizens. The United States Government, in its convention treaties like that signed with Costa Rica and ratified by the United States Senate December 14, 1912, states in Article 5: "The declaration of intention to become a citizen of the one or the other country, has not for either party the fact of naturalization." (Nicaragua, Naturalization Convention, 1908, Article 3; Argentine, Naturalization Convention, 1909, Article 5.) No other country in the world has enacted any statutes expatriating a citizen without vesting him with new citizenship.

3. Declaration of Withdrawal.

In one of the leading cases, "*The Venus*," 1814, Cranch 253, 280, Chief Justice Marshall laid down the law in such comprehensive terms that it may be well quoted:

"But this national character which a man acquires by residence may be thrown off at pleasure by a return to his native country, or even by turning his back on the country in which he has resided on his way to another.... Mere declarations of such an intention ought never to be relied upon when contradicted, or, at least, rendered doubtful by a continuance of that residence which impresses the character. They may have been made to deceive; or, if sincerely made, they may never be executed. Even the party himself ought not to be bound by them, because he may afterwards find reason to change his determination, and ought to be permitted to do so."

In accordance with this decision, the Selective Service Regulation of the United States, published by the office of the Provost Marshall General August 15, 1918, under Section 323, issued a form of affidavit for neutral declarants which provides that "a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen and he shall forever be debarred from becoming a citizen of the United States. (C. S. S. R. No. 6, August 15, 1918.)"

4. Continuous Residence.

By section 12 of the act approved March 3, 1813, which act provided for "the regulation of seamen on board the public and private vessels of the United States," it was declared that "no

person who shall arrive in the United States from and after the time when this act shall take effect shall be admitted to become a citizen of the United States who shall not for the continued term of five years next preceding his admission as aforesaid have resided within the United States, without being at any time during the said five years out of the territory of the United States."

Only one case has been found in which the stringent rule expressed in the statute of 1813 was brought into operation. In that case, *Ex parte Paul*, 1844, 7 Hill, 56, it appeared that Alexander Paul, an alien born in Ireland, applied for naturalization as a citizen. He had come to the United States in July 1836, and he had since that time resided here. The only question as to his naturalization arose out of the following facts:

"In September, 1843, the applicant left the city of Rochester to go to Ogdensburgh, St. Lawrence County, by way of the lake. The steamboat in which he traveled stopped about ten minutes at Kingston, Upper Canada, to take in passengers, during which time the applicant stepped upon the wharf or dock, where he remained some two or three minutes, and then returned to the boat and proceeded to Ogdensburgh."

The court, referring to the strict language of the statute of 1813, said:

"The leading object of the provision was undoubtedly to make the alien's right depend upon the simple enquiry whether he has in fact remained within the United States during the whole five years next preceding his application, and thus exclude all enquiry as to the intention and purpose of his departure. In the present case the applicant has not complied with the condition upon which his right to become a citizen depends, and his application must, therefore, be rejected."

In the case of *in re Hawley*, 1866, 1 Daly, 531, the court refers to a case (which seems never to have been reported, unless, indeed, the court has in mind and is confused over *Ex parte Paul*), the facts of which he stated as follows:

"It was decided in this court that a person visiting the falls of Niagara, who had crossed to the Canadian side to look at the falls from that point of view, had been out of the territory of the United States, and could not be naturalized until the expiration of five years thereafter."

5. Dual Nationality.

Cases frequently arise where the *jus soli* and the *jus sanguinis* are both applicable, giving rise to a conflict of citizenship termed "dual allegiance or nationality." The reason for this conflict is found in the municipal law of the United States declaring that

persons born in the jurisdiction of the United States are citizens of the country, and in the further rule that children born abroad of citizens are considered citizens of the country. The conflict of citizenship arises frequently by reason of the existence of the **jus soli** and the **jus sanguinis**, and such conflict is solved by the express or implied election of the child upon reaching majority. This election may be manifested either by repatriating to the country of the father's nationality or by remaining in the country of birth.

Another cause of dual allegiance is present where a person obtains a new allegiance by naturalization without severing the ties binding him to the country of original allegiance. Of interest is the new German law of nationality of 1913 (Reichs- und Staats-Angehörigkeitsgesetz vom 22. Juli 1913, R. G. Bl. 583), which designedly approves of dual allegiance by stipulating that a German subject residing in a foreign country may acquire naturalization therein without renouncing his German nationality, unless such renunciation of the prior allegiance is a condition precedent to obtaining the new nationality. (This requirement is made in the United States.)

6. Impeachment of Citizenship.

Naturalization being an act by a court of record, it is subject to impeachment for similar reasons which would render any judgment of a court invalid. Thus, naturalization obtained under fraudulent statements may be impeached. A recent case in point is *United States v. Darmer*, 249 Fed. 989, according to which the defendant refused to buy any government bonds for the prosecution of the war on the ground that he, the defendant, was of German descent, and that by buying bonds he would be "kicking his own mother." The Court held that the conduct and statements of the defendant conclusively proved that defendant's allegiance was to Germany and not to the United States, and that defendant took falsely an oath renouncing his allegiance to Germany and his Emperor by means of which he secured his certificate of naturalization. For this reason the certificate of citizenship was canceled.

7. Requirements in Other Countries.

ARGENTINE: Law of 1869. Art. 2. The following are citizens by naturalization:

1. Foreigners over eighteen years of age who reside two years continuously in the Republic and declare their desire to be such before the federal district judges.

AUSTRIA: General Civil Code. Sec. 29. Foreigners acquire Austrian citizenship by entering the public service; (by engaging in an industry the carrying on of which necessitates a regular domicile in the country;) by an uninterrupted residence of ten years in these States, provided the foreigner has not incurred punishment for any crime during this period.

HUNGARY: Law of 1879. A foreigner acquires citizenship: (2) Provided he is a member of any home parish community, or if he is in process of becoming so.

(3) Provided he has been living in the interior for five years without interruption.

(6) Providing he has been inscribed on the list of taxpayers for five years.

BELGIUM: Law of August 6, 1881. Art. 2. In order to obtain "grand" naturalization it is necessary: 1, to have attained the full age of 25 years; 2, to be married or to have one or more children from a marriage; 3, to have resided in Belgium for at least ten years.

BOLIVIA: Act of October 28, 1880. Par. 2. Foreigners who, having resided one year in the Republic, declare their desire to settle in Bolivia before the authorities of the municipality in which they reside.

BRAZIL: Constitution. Citizenship acquire: Par. 4. All foreigners in Brazil on November 15, 1889, who do not declare their intention to retain their original nationality within six months after the constitution goes into force.

Par. 5. Foreigners who own real estate in Brazil, and are married to Brazilian women, or have Brazilian children, provided they reside in Brazil, unless they declare their intention not to change their nationality.

CHILE: Constitution of 1833. Citizenship acquire: Par. 3. Foreigners who, having resided in the Republic one year, declare their desire to settle in Chile before the municipality of the Territory in which they reside, and apply for naturalization papers.

Par. 4. Those who have been naturalized as a special favor by the Congress.

COLOMBIA: Constitution of 1886. Par. 3. By adoption.

Foreigners who request and obtain naturalization papers.

COSTA RICA: Constitution of 1871. Par. 3. Persons born in other countries who, after having resided one year in the Republic, obtain naturalization papers.

CUBA: Constitution. Par. 3. Foreigners who, after five years' residence in the territory of the Republic, and not less than two years from the time that they declared their intention of acquiring Cuban citizenship, may obtain their letters of naturalization in conformity with the laws.

DOMINICAN REPUBLIC: Constitution: Par. 4. All persons naturalized according to the laws.

Par. 5. All foreigners of any friendly nation, provided they establish their domicile within the territory of the Republic and declare their desire to become Dominicans, and provided they shall have resided here at least two years and expressly renounce their nationality before the proper authority, acquire citizenship.

For the purpose of this article the legitimate children of foreigners residing in the Republic as representatives or in the service of their country shall not be considered as being born within the territory of the Republic.

ECUADOR: Constitution of 1897. Citizenship acquire: Par. 5. Foreigners who profess science, art, or useful industry, or who may be owners of real property or invested capital, and who, after having resided one year in the Republic, declare their intention of becoming domiciled therein and obtain letters of naturalization.

Par. 6. All who obtain nationality rights for services to the Republic.

FRANCE: The law of June 26, 1889, grants citizenship to: III. Those who may be naturalized on their application.

1. Aliens who have obtained permission to establish their domicile in France, after three years of such domicile. (Same law, Art. 8, Sec. 5, new, of the Code.)

GERMAN EMPIRE: Law of June, 1870. North Germans who have lost their citizenship by a ten years' residence abroad and then return to the territory of the North German Confederation, acquire citizenship in that State of the Confederation in which they settle by means of a certificate of admission issued by the higher administrative authority. This certificate must be issued to them on their request.

GREAT BRITAIN: Naturalization Act of 1870. Par. 7. An alien who, within such limited time before making the application hereinafter mentioned as may be allowed by one of Her Majesty's principal secretaries of state, either by general order or on any special occasion, has resided in the United Kingdom for a term of

not less than five years, or has been in the service of the Crown for a term of not less than five years, and intended when naturalized either to reside in the United Kingdom or to serve under the Crown, may apply to one of Her Majesty's principal secretaries of state for a certificate of naturalization.

GREECE: Civil Law 391, Oct. 29, 1856. Art. 15. An alien who is of age according to the law of the nation to which he belongs may become a Greek by naturalization. Every person wishing to be naturalized must declare his desire to the authorities of the place where he wishes to establish his residence, and after the declaration he shall reside in Greece two years if he is of the Greek race, and three years if of a different race; upon the expiration of this period, and upon procuring a certificate from the proper public attorney, that he has not committed any of the crimes or offenses embraced within article 22 of the penal code, he must take the oath of a Greek before the proper prefect.

GUATEMALA: Constitution. Par. 6. Law relating to naturalization and acquisition of citizenship:

(a) All foreigners may acquire citizenship in Guatemala after two years' residence and complying with legal requirements. ("Ley de Extranjeria," articles 86 and 88. Inclosure II).

HAITI: Constitution. Art. 9. Every citizen who has attained the age of 21 years shall exercise political rights if he fulfills all the other conditions established by the constitution.

Naturalized Haitians are only permitted to exercise these rights after five years' residence in the Republic.

HONDURAS: Constitution, 1904. Citizenship may be acquired by: Par. 2. Other foreigners who have resided in the country two years and declare their desire to become naturalized therein before the proper authority.

JAPAN: Law of July 9, 1898. II. The minister of the home department may give the permission mentioned in the preceding article, if the following requisites exist as to the alien.

1. He must have had his domicile or residence for at least one full year in Japan.

MEXICO: Constitution. Art. 13. At the expiration of the six months, and when the alien has resided two years in the Republic, he may petition the Federal Government to grant him his certificate of naturalization. In order to obtain it he must first appear before the district judge in whose jurisdiction he is, and undertake to prove the following facts:

I. That under the laws of his country he enjoys full civil rights, being of age.

II. That he has resided in the Republic at least two years, and has conducted himself properly.

III. That he has a business, trade, profession, or income to support him.

NETHERLANDS: Law of December 12, 1892. A foreigner, to acquire citizenship, must prove: Par. 2. That he has lost his Netherlands nationality or that he has during the last five years had his residence or his principal stopping place in the Kingdom or its colonies or possessions in other parts of the world.

NICARAGUA: Constitution, 1905. Citizenship is acquired by: Par. 1. Spanish-American citizens who declare before the respective authority their desire to become naturalized in the country.

Par. 2. All other aliens who have resided two years in the country and make the same declaration.

PANAMA: Constitution. Citizenship is acquired by: Par. 3. Foreigners who, professing some science, art, or industry, or owning some real estate or capital in circulation, and who, having completed ten years of residence within the Territory of Panama, declare before the municipal authorities of the place in which they have been residing, their intention of becoming citizens of Panama.

PARAGUAY: Constitution of 1870. Art. 36. To obtain naturalization in Paraguay it shall be sufficient for the alien to have resided two consecutive years in the country and owned some real estate, had some capital invested in business, practiced some profession, or engaged in some industrial occupation or art. This period of two years may be shortened if the alien has married a Paraguayan or proves that he has rendered services to the Republic.

PERU: Constitution. Art. 35. The following are Peruvians by naturalization:

Foreigners over 21 years of age residing in Peru, who exercise some trade, industry, or profession, and who are inscribed in the civil register in the manner prescribed by law.

PERSIA: Ordinance. Sec. III. Whosoever being a citizen of a foreign state applies to become a subject of Persia, he must show, first, that he is of full age; second, that he has lived five years in succession in some part of Persia; third, that he is not under condemnation for any crime committed in the country of his nativity, and that he is not a fugitive from the military service of the state.

Having given proof of his fitness, his certificate of naturalization will be delivered to him, and he can then obtain all the rights and privileges of a citizen of Persia.

PORTUGAL: Civil Code. Foreigners may acquire citizenship: Par. 1. When they are able to earn a livelihood by their own efforts or have other means of subsistence;

Par. 2. When they have resided at least a year in Portuguese territory.

SALVADOR: Constitution. Citizenship is acquired by: Par. 2. Foreigners who apply for and obtain naturalization from the same authority, by proving their good character and two years' residence in Salvador.

TURKEY: Law of 1869. Art. III. A foreigner of age who has lived in the Ottoman Empire consecutively for five years can obtain Ottoman nationality by submitting personally, or through intermediary, a petition to the department of foreign affairs.

URUGUAY: Constitution. Art. 8. The following are naturalized citizens: Foreigners who are the parents of native-born citizens and who were domiciled in the country before the establishment of the present constitution; the children born abroad of a father or mother born in the country, as soon as they take up their residence therein; foreigners who have fought or may fight in the army or navy of the nation as officers; foreigners, even without children, or with foreign children, but married to women of the country, who professing some science, art, or industry, or having some capital invested in business or real estate, reside in the State at the time this constitution is adopted; foreigners, married to foreign women, who possess some of the qualifications just mentioned, and have resided three years in the State.

X.

NATURALIZATION IN TIME OF WAR.

The Act of 1798 provides: "No alien who shall be a native citizen or denizen or subject of any nation or state with whom the United States shall be at war at the time of his application shall be then admitted to become a citizen of the United States." This was repealed by the act of 1802, but the latter law contained a similar provision. This law was enforced when the war of 1812 was declared, and two decisions were rendered under it.

In his "Element of International Law" General Halleck declares (Page 133): "The right of voluntary expatriation exists only in time of peace and for lawful purposes."

Mr. Fish, Secretary of State, said: "It (expatriation) cannot be exercised by one while residing in a country whose allegiance he desires to renounce. During the existence of hostilities no subject of a belligerent can transfer his allegiance or acquire another citizenship, as the desertion of one country in time of war is an act of criminality, and to admit the right of expatriation 'flagrante bello' would be to afford a cover to desertion and treasonable aid to the public enemy."

XI.

ALIENS.

The Status of aliens, for a long time a subject of dispute and contradictions, has now been definitely settled by judicial decisions and by agreement.

Aliens coming within our territory are entitled to the same protection in their personal rights as our own citizens and no more. (Butler, At. Gen. 1837, 3 Op. 254.) The policy of the United States in all cases of complaints made by foreigners is to extend to them the same means of redress as is enjoyed by our own citizens. (Cushing, At. Gen. 1855, 7 Op. 229).

Every foreign-born, residing in a country, owes to that country allegiance and obedience to its laws as long as he remains in it, as a duty imposed upon him by the mere fact of his residence, and the temporary protection which he enjoys, and is as much bound to obey its laws as native subjects or citizens. This is the universal understanding in all civilized states, and nowhere a more established doctrine than in this country. (Mr. Webster, Sec. of State, report to the President, Dec. 23, 1851.)

1. Residence.

Residence, in its legal acceptance, is the place of the party's home or domicile, and not merely the spot occupied by him for the time being. This may be constantly varying, but every change of abode is not regarded as constituting a new residence without the accompaniment of an intention to abandon the former with the purpose of taking up another.

Aliens domiciled in the United States owe to the Government a local and temporary allegiance, which continues during the period

of their residence, and for the violation of which they may become liable to prosecution for treason, just as a citizen. (*Carlisle v. United States*, 16 Wall. 147.)

2. Sojourners.

Mr. Justice Field laid down the controlling principle in these words: "The rights of sovereignty," says Wildman, in his *Institutes on International Law*, "extend to all persons and things not privileged that are within the territory. They extend to all strangers therein, not only to those who are naturalized and to those who are domiciled therein, having taken up their abode with the intention of permanent residence, but also to those whose residence is transitory. All strangers are under the protection of the sovereign while they are within his territories, and owe a temporary allegiance in return for that protection." By allegiance is meant the obligation of fidelity and obedience which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives. It may be an absolute and permanent obligation, or it may be a qualified and temporary one. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, whilst domiciled in the country, owes a local and temporary allegiance, which continues during the period of his residence.

XII.

EXPATRIATION.

By an act approved March 3, 1865 (*Stats. at Large*, chap. 79, sec. 21), Congress provided—that in addition to the other lawful penalties of the crime of desertion from the military or naval service, all persons who have deserted the military or naval service of the United States, who shall not return to said service or report themselves to a provost-marshal within sixty days after the proclamation hereinafter mentioned, shall be deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship and their rights to become citizens.

The act means, said the court in a number of cases, that the forfeiture which it prescribes, like all other penalties for desertion, must be adjudged to the convicted person, after a trial by a court-martial, and sentence approved. (*Huber v. Reily*, 1866, 53 Pa. St.,

112.) And the conviction in such case can be proved only by a duly authenticated record. (*Goetscheus v. Matthewson*, 1875, 61 N. Y. 420.)

The question of the right of a citizen to expatriate himself from the American Union has been the subject of considerable discussion by the courts. One of the earliest expressions on the question is to be found in *Jansen v. Brigantine*, 1794, Bee, 11, 23, where the court, commenting upon the alleged expatriation of one of the parties to the action said: "I have perused, with attention, the cases cited on both sides as to the right of expatriation and emigration, in the general manner there laid down, where no legal prohibition exists and no prejudice is done thereby. The act of naturalization of Congress and the constitution of this State concur to sanction this doctrine, and we should with an ill grace refuse to our own citizens what we thus hold out to others.

The same view, substantially, was expressed by one of the Federal circuit courts in *Stoughton v. Taylor*, before 1840, 2 Paine C. C., 656, 661: "In this country," said Van Ness, J., "expatriation is conceived to be a fundamental right." As far as the principles maintained and the practice adopted by the Government of the United States is evidence of its existence, it is fully recognized. It is constantly exercised and has never in any way been restrained.

In 1879, in *United States v. Crook*, 5 Dill., 453, 464, the court, in passing upon the right of an Indian to forsake his tribal relations, took occasion to speak of the right of expatriation, which he denominated a "God-given right." In 1897, *Jennes v. Landes*, 84 Fed., 73, 74, the statute was expressly referred to by the court, and an interpretation given of its meaning, Hanford, district judge, saying: "A change of allegiance from one government to another can only be effected by the voluntary action of the subject, complying fully with the conditions of naturalization laws, so that there is concurrent action and assent on the part of both the subject and the government to which the new allegiance attaches. Authorities entitled to great respect have been cited in the argument, holding that it is also necessary to have assent on the part of the government renounced. In my opinion that rule no longer obtains in the United States, since Congress, by the act of July 27, 1868, now reenacted in section 1999, Revised Statutes, has expressly declared it to be the policy of our Government that the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness."

XIII.

DIPLOMATIC AGENTS.

1. Commissioners and Special Envoys.

The expression "ambassadors and other public ministers," in the Constitution, must be understood as comprehending all officers having diplomatic functions, whatever their title or designation.

The commissioner of the United States in China is a diplomatic officer by the law of nations, and a judicial officer by treaty and statute. (Cushing, At. Gen., 1855, 7 Op. 186.)

2. Appointment.

"The Constitution having declared that the President shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, the President desired my opinion whether the Senate has a right to negative the grade he may think it expedient to use in a foreign mission as well as the person to be appointed. I think the Senate has no right to negative the grade." (Opinion of Mr. Jefferson, Apr. 24, 1790, 7 Jeff. Works, 465.)

The President, under the Constitution, has power to appoint diplomatic agents of any rank, at any place, and at any time, subject to the constitutional limitations in respect to the Senate. The authority to make such appointments is not derived from, and cannot be limited by, any act of Congress, except in so far as appropriations of money are required to provide for the expenses of this branch of the public service. During the early administrations of the government, the appropriations made for the expenses of foreign intercourse were to be expended in the discretion of the President, and from this general fund ministers whom the President saw fit to name were paid. Congress, in any view, cannot require that the President shall make removals or reappointments or new appointments of public ministers at a particular time, nor that he shall appoint or maintain ministers of a prescribed rank, at particular courts. It was therefore held that where the act of March 1, 1855 (10 Stat. 619), declared that from and after the end of the present fiscal year the President shall appoint envoys, etc., this was not to be construed to mean that the President was required to make any such appointments, but only to determine what should be the salaries of the officers in case they have been or shall be appointed. (Cushing, At. Gen., 1855, 7 Op. 186.)

3. Classification of Ministers.

Rules of Congress of Vienna.—For the sake of convenience and uniformity in determining the relative rank and precedence of diplomatic representatives, the Department of State has adopted and prescribed the seven rules of the Congress of Vienna, found in the protocol of the session of March 9, 1815, and the supplementary or eighth rule of the Congress of Aix-la-Chapelle of November 21, 1818. They are as follows:

In order to prevent the inconveniences which have frequently occurred, and which might again arise, from claims of precedence among different diplomatic agents, the plenipotentiaries of the powers who signed the Treaty of Paris have agreed on the following articles, and they think it their duty to invite the plenipotentiaries of other crowned heads to adopt the same regulations:

Article I. Diplomatic agents are divided into three classes: That of ambassadors, legates, or nuncios; that of envoys, ministers, or other persons accredited to sovereigns; that of *chargés d'affaires* accredited to ministers for foreign affairs.

Art. II. Ambassadors, legates, or nuncios only have the representative character.

Art. III. Diplomatic agents on an extraordinary mission have not, on that account, any superiority of rank.

Art. IV. Diplomatic agents shall take precedence in their respective classes according to the date of the official notification of their arrival. The present regulation shall not cause any innovation with regard to the representative of the Pope.

Art. V. A uniform mode shall be determined in each state for the reception of diplomatic agents of each class.

Art. VI. Relations of consanguinity or of family alliance between courts confer no precedence on their diplomatic agents. The same rule also applies to political alliances.

Art. VII. In acts or treaties between several powers which grant alternate precedence, the order which is to be observed in the signatures shall be decided by lot between the ministers.

Art. VIII. It is agreed that ministers resident accredited to them shall form, with respect to their precedence, an intermediate class between ministers of the second class and *chargés d'affaires*.

The rules of the Congress of Vienna are understood to be accepted by all nations...except the Porte, which has a system of its own, only differing from the Vienna rules by classing ministers resident and ministers plenipotentiary together.

4. Diplomatic Grades in the United States.

The general rules of the Department of State in treating questions of precedence among the envoys accredited to the Government of the United States, are as follows:

1. The rules of Vienna (as modified by the Congress of Aix-la-Chapelle) are followed, whereby four grades of diplomatic representation are recognized, to wit: Ambassador, Minister Plenipotentiary, Minister Resident, and Chargé d'Affaires.

2. In each of these grades individual precedence is determined by the date of the envoy's presentation of his credentials.

3. The holding by the envoy of an additional consular office is entirely disregarded; only the diplomatic rank he holds as chief of the mission, permanently or for the time being, is taken into account.

4. A chargé d'affaires *missi*, that is, a person bearing a letter addressed to the Secretary of State accrediting him as chargé is looked upon as a permanent envoy of the 4th class, and as such takes precedence over a chargé d'affaires *ad interim*.

5. Any member of the regular diplomatic personnel of a mission may become chargé d'affaires *ad interim* upon presentation as such to the Secretary of State by the retiring envoy, or *ex officio* upon the death or disability of the regular head of the mission. A consular officer, not holding a diplomatic appointment also, may not become a chargé d'affaires *ad interim*; he can only be made a chargé d'affaires *missi* by special credentials in that capacity. In neither case would the fact of the chargé's holding a coincident consular appointment affect his precedence as chargé.

6. The same rule holds as to the higher grades of diplomatic representation. Thus, the title and combined office of minister resident and consul general is not uncommon, but the supernumerary consular office neither adds to nor detracts from the diplomatic rank. The officer is simply a minister resident for all purposes of diplomatic precedence. Only as to consular functions would his consular rank be considered in fixing his precedence among consular officers.

7. The fact that a chief of a foreign mission in one country may at the same time be accredited in the same or another diplomatic capacity to the government of another country does not affect his precedence in either. For instance, the United States envoy extraordinary and minister plenipotentiary to Hayti is also accredited to the Dominican Republic as chargé d'affaires (*missi*). His absolute rank in the diplomatic body at Santo Domingo city is merely that

of chargé d'affaires, while his relative precedence among the chargés is understood to be fixed by the date of his reception by the Dominican minister of foreign affairs. (Mr. Hay, Sec. of State to Mr. Sampson, min. to Ecuador, No. 131, Feb. 17, 1900, MS. Inst. Ecuador, II. 22). (See Mr. Foster, Sec. of State, to Mr. Heard, No. 151, Dip. Series, Oct. 31, 1892, MS. Inst. Corea, I, 414.)

5. Grade of Diplomatic Representatives.

The diplomatic representatives of the United States are of the first, the second, the intermediate, and the third classes, as follows:

(a) Ambassadors extraordinary and plenipotentiary.

(b) Envoys extraordinary and ministers plenipotentiary, and special commissioners, when styled as having the rank of envoy extraordinary and minister plenipotentiary.

(c) Ministers resident.

These grades of representatives are accredited by the President.

(d) Chargés d'affaires, commissioned by the President as such, and accredited by the Secretary of State to the minister for foreign affairs by the government to which they are sent.

In the absence of the head of the mission the secretary acts *ex officio* as chargé d'affaires *ad interim*, and needs no special letter of credence. In the absence, however, of a secretary and second secretary, the Secretary of State may designate any competent person to act *ad interim*, in which case he is specifically accredited by letter to the minister for foreign affairs.

6. Superadded Consular Office.

When the office of consul-general is added to that of envoy extraordinary and minister plenipotentiary; minister resident, chargé d'affaires, or secretary of legation, the diplomatic rank is regarded as superior to and independent of the consular rank. The officer will follow the Consular Regulations in regard to his consular duties and official accounts, keeping correspondence in one capacity separate from correspondence in the other.

7. Credentials and Reception.

When a foreign minister arrives at London, Paris, St. Petersburg, or other courts, he obtains an interview of the secretary of state for foreign affairs, and delivers to him a copy of his letter of credence. The secretary of state afterwards, on a day fixed, presents him to the sovereign, to whom he delivers the original. On that day,

or as soon as convenient, he visits all the secretaries, or heads of the government.

The foreign minister's wife, who has claims incident to the station of her husband, makes a visit at the same time to the wives of the secretaries, or heads of the government.

When foreign ministers leave the seat of government, to travel in the interior, they give notice of it to the secretary of state for foreign affairs. They likewise give notice of their return home.

The diplomatic agents who are accredited to the President usually transmit to the Department a copy of their letter of credence, with a note requesting the appointment of a time for them to present the original. A copy of the remarks they may think proper to make on the occasion, frequently accompanies their note asking for a presentation, and is submitted to the President in order that he may prepare a suitable reply. It has not of late been deemed necessary to write out this answer. The Secretary of State usually accompanies the diplomatic agent to the President on his first presentation, but this is not deemed necessary on subsequent occasions.

As the presentation of an envoy's credentials, when they are addressed to the President by the chief of the foreign state which sends him, is performed in private audience, the ceremonial is simple. Upon the receipt of the appointed envoy's note submitting an office copy of his letter of credence and requesting the assignment of a day and hour for his reception, the President's directions in the premises are sought, and the Secretary of State informs the envoy of the time designated, adding that if he will visit the Department of State a few moments before the hour fixed, it will afford him pleasure to accompany him to the Executive Mansion and present him to the President.

Upon the envoy's responding to this invitation, the Secretary of State accompanies him in person and presents him by name and title to the President, who receives him in one of the private reception rooms of the Executive Mansion. The envoy pronounces a written address, of which a copy has previously been furnished to the Secretary of State, and delivers his sealed letter of credence, whereupon the President in turn reads the reply which has been prepared in advance. After a few moments of informal conversation the envoy withdraws.

The audience is entirely private, no one but the Secretary of State being present. No formalities of military parade accompany the envoy's visit either to the Department of State or to the Executive Mansion.

8. Secretaries of Embassy or Legation.

A secretary of a mission is, according to the admitted principles of international law, a "public minister." His personal privileges, immunities, domiciliary privileges, and exemptions are generally those of the diplomatic representative of whose official household he forms a part.

As long as the head of the mission is present, the secretary is not recognized by any foreign government as being authorized to perform a single official act other than as directed by the head of the mission.

Whilst in the official and private intercourse between a minister and his secretaries it is undoubtedly among the first of his duties to observe a frank, courteous, and kindly demeanor towards them, on the other hand, it is no less incumbent on the secretaries to fulfil with alacrity and dispatch, in the best manner they are able, the general and occasional instructions of the minister touching the affairs of the legation, and to maintain in their intercourse with him an unvarying due observance of all that deference which characterizes the gentleman, and which is prescribed by the rules of good breeding. No servility, however, on their part, or any compromise of that self-respect which they owe to themselves, is expected.

9. Right to Protection.

As in war, the bearers of flags of truce are sacred, or else wars would be interminable; so in peace, ambassadors, public ministers, and consuls, charged with friendly national intercourse, are objects of especial respect and protection, each according to the rights belonging to his rank and station. (President Filmore, annual message, Dec. 2, 1851, H. Ex. Doc. 2, 32 Cong. 1 sess. 7.) (Mr. Webster, Sec. of State, to Mr. Calderon de la Barca, Span. min., Nov. 13, 1851, 6 Webster's Works, 507.)

The person of a public minister is sacred and inviolable. Whoever offers any violence to him, not only affronts the sovereign he represents, but also hurts the common safety and well-being of nations; he is guilty of a crime against the whole world. . . .

The comites of a minister, or those of his train, partake also of his inviolability. The independency of a minister extends to all his household; these are so connected with him, that they enjoy his privileges and follow his fate. The secretary to the embassy has his commission from the sovereign himself; he is the most distinguished character in the suite of a public minister, and is in some

instances considered as a kind of public minister himself. (McKean, Chief Justice, *Republica v. De Longschamps*, Court of Oyer and Terminer at Philadelphia, 1784 (1 Dallas, 111, 116).

10. Conseiller.

The title conseiller is understood to be a special designation applied to the secretary of an embassy or legation by the governments of certain countries only. Martens says: "Some governments give to the first secretaries of their higher missions the title of conseiller of embassy or of legation." (Guide Diplomatique, chap. v.) In the last edition of the *Almanach de Gotha*, a semiofficial publication, the missions maintained at St. Petersburg by Germany, Austria, Belgium, China, France, and Turkey are accredited with conseillers, the rest having secretaries.

The functions of conseiller and secretary are understood to be in fact identical, differing only in name, and although the French word is equivalent to our counsel or counsellor, no legal office or character is supposed to be intended. The local counsel or law-adviser of a mission is not a recognized diplomatic officer.

11. Attachés.

In the diplomatic list at Washington, there appear, besides the heads of missions, the offices of "secretary" of embassy, or of legation, as the case may be; "first secretary," "second secretary," "third secretary," and "secretary interpreter," (China); "counselor of legation and first secretary of embassy" (Germany), "counselor of legation," and "chancellor"; "attaché," "military attaché," "naval attaché," "interpreter attaché," "technical attaché," "commercial attaché," "honorary attaché," "financial attaché," "student attaché," and "expert for agriculture and forestry." In the list dated April, 1915, most of these titles appear, and we also find "legal counselor" and "commercial delegate." (In January, 1894, the Department of State dropped from the diplomatic list of officers bearing the title of "chancellor," but stated that their names would be restored on the announcement that they were in fact diplomatic officers, although it was thought that some other designation than "chancellor," which was thought to denote a purely clerical relation, would be desirable. (Memorandum, Aug. 11, 1894, MS. Notes to France, X, 356).

12. Military Attachés.

Each military attaché is, in a sense, an aide-de-camp to the ambassador or minister to whose embassy or legation he is appointed.

The orders of the ambassador or minister will be obeyed, unless they manifestly conflict with orders or instructions given by the Secretary of War. In the latter case, the military attaché will respectfully notify the ambassador or minister of the circumstances which prevent a compliance with his orders, in which event the full particulars of the case must be at once forwarded to the Adjutant-General. It is the earnest wish of the War Department that the most harmonious relations should exist between the military attachés and their chiefs in the diplomatic service. Any military attaché whose relations with the chief of the embassy or legation to which he is assigned are not most cordial will request a recall. A dignified appreciation of his own position and courteous respect for his diplomatic chief will be expected of each attaché. (Mr. Sherman, Sec. of State to Mr. Hay, amb. to England, No. 259, October 14, 1897, MS. Inst. Great Britain XXXII, 251).

13. Naval Attachés.

The United States Navy Department desiring to establish reciprocity in the matter of visits by foreign naval attachés or by other persons to the Government navy-yards and stations, as well as to the yards of private firms engaged in Government work, the Secretary of the Navy requests me to inform you of the adoption of the following rules which correspond to the facilities afforded by the Government of France to United States naval attachés and other officials in the same direction.

For visits by the naval attaché a written request is to be made by the attaché to the Secretary of the Navy and presented by the attaché to the Office of Naval Intelligence for transmission to the Bureau of Navigation. Subsequently, letters are to be prepared by the Office of Naval Intelligence, according to departmental decision, as heretofore.

But commandants of yards and stations are to be directed not to show any new developments or special machinery until specifically authorized, and not to show any drawings or printed matter. For such matter the attaché is to be referred to the Office of Naval Intelligence; and the attaché is to be accompanied by an officer with these restrictions in mind.

For visits by other persons, the request is to be made through the Department of State by the ambassador or chargé d'affaires ad interim, and the scope of the visits to be restricted by direction to commandants, as in the case of the naval attaché. (A note was also addressed, on the same day, to the German embassy.) This note.

after stating the rules adopted by the United States corresponded to the facilities afforded by the German Government, read as follows: "For visits by naval attachés, and by all others as well, the requests are to be made through the Department of State by the ambassador or chargé d'affaires ad interim. Subsequently letters are to be prepared by the office of Naval Intelligence according to the decision of the Navy Department, made known to the Bureau of Navigation. Commandants of stations are to be directed to afford as liberal opportunities as the interests of the United States will admit." (Mr. Hay, Sec. of State, to Count Quadt, chargé, No. 498, Nov. 20, 1900, MS. Notes to German Leg. XII. 513). It is the custom of the United States to designate as naval attachés officers whose services may be styled strictly naval rather than medical or otherwise. (Mr. Frelinghuysen, Sec. of State, to Mr. Chandler, Sec. of Navy, Dec. 27, 1884, 153 MS. Dom. Let. 516).

14. Scientific Attachés.

The rank of scientific attachés is set forth in the following correspondence:

"Replying to your oral inquiry of the 29th ultimo, as to whether Mr. Stiles, the agricultural and scientific expert attached to the United States embassy in Berlin, has diplomatic rank, I beg to say that it is understood that the relation of Mr. Stiles to the embassy is similar to that of a military or naval attaché, who, while he does not hold diplomatic rank in the sense of being in the line of representative succession, so as to act as chargé d'affaires ad interim, is regarded as being attached to the mission. As an illustration of my meaning, I may refer to the case, as understood by the Department, of Baron von Herman, the agricultural and forestal expert of the imperial German embassy. While Baron von Herman does not, as the Department is advised, stand in the line of representative succession, his name appears in the diplomatic list, and is certified to the authorities of this city as that of a member of the embassy." (Mr. Moore, Act. Sec. of State, to Freiherr Speck von Sternburg, June 2, 1898, MS. Notes to German Legation, XII. 139).

15. Local Counsel.

The Department of State sees no objection to a person who acts as counsel to an embassy or legation so designating himself in his general practice, provided that it be distinctly understood that his acts are not officially representative or in any way conclusive upon

the embassy or legation or upon the United States Government. (Mr. Rockhill, Assist. Sec. of State, to Mr. Coudert, June 17, 1896, 210 MS. Dom. Lct. 666, inclosing copy of instruction to Mr. Eustis, amb. to France, No. 610, April 30, 1896.

16. Claims.

Sections 5498, Rev. Stat., which forbids any "person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States," to prosecute or aid or assist in prosecuting claims against the United States, would not subject to the penalties therein prescribed a person who accepted an office or place while engaged in the prosecution of claims against the United States but would subject him to such penalties if, while holding such office or place, he should engage in the prosecution of claims against the United States before the Spanish Treaty Claims Commission or other tribunal. (Knox, At. Gen., Oct. 1, 1901, 23 Op. 533.)

17. Diplomatic and Consular Functions.

Some foreign governments do not recognize the union of consular with diplomatic functions. Italy and Venezuela will only receive the appointee in one of his two capacities, but this does not prevent the requirement of a bond and submission to the responsibilities of an office whose duties he cannot discharge. The superadded title of consul-general should be abandoned at all missions. (President Cleveland, annual message, Dec. 8, 1885, For. Rel. 1885.)

So far as the rule of this government is concerned, the diplomatic function of a consular officer is only recognized when he bears a special letter of credence addressed to the Secretary of State; and conversely a consular officer of the United States, even when left in custody of a legation, has no diplomatic rank, functions or immunities, unless he be expressly accredited to the minister for foreign affairs.

18. Duties of Diplomatic Agents.

The plain duty of the diplomatic agents of the United States is scrupulously to abstain from interfering in the domestic politics of the countries where they reside. This duty is specially incumbent on those who are accredited to governments mutable in form and in the persons by whom they are administered. By taking any open part in the domestic affairs of such a foreign country they must, sooner or later, render themselves obnoxious to the executive

authority, which can not fail to impair their usefulness. (Mr. Buchanan, Sec. of State, to Mr. Shields, Aug. 7, 1848, MS. Inst. Venez. I. 73.)

19. Speeches.

By standing instruction of this Department, the diplomatic and consular officers of the United States abroad have, for some time past, been prohibited from corresponding with newspapers. As a sequel to that regulation, it is deemed advisable to extend a similar prohibition against their making addresses to the public anywhere, except upon festal occasions to which they may be invited in the country which may be the scene of their official duties. Even upon such occasions, however, the utmost caution must be observed in touching upon political matters. In no event is a minister or consul to make an address to the public, or which may be published, in any other country than that where he may officially reside. (Mr. Seward, Sec. of State, to Dip. and Consular Officers, circular, Oct. 1, 1862, MS. Circulars, I. 212.)

Public addresses by diplomatic officers of the United States are prohibited, "unless upon exceptional festal occasions, in the country of official residence. Even upon such occasions any reference to political issues, pending in the United States or elsewhere, should be carefully avoided." (Instructions to Dip. Officers of the United States (1897), Art. 69, p. 26.)

20. Presents.

The acceptance of . . . presents by ministers of the United States is expressly prohibited by the Constitution; and even if it were not, while the United States have not adopted the custom of making such presents to the diplomatic agents of foreign powers, it can scarcely be consistent with the delicacy and reciprocity of intercourse between them, for the ministers of the United States to receive such favors from foreign princes as the ministers of those princes never can receive from this government in return. The usage, exceptionable in itself, can be tolerated only by its reciprocity. It is expected by the President, that every offer of such present which may, in future, be made to any public minister or other officer of this government, abroad, will be respectfully, but decisively, declined. (Mr. J. Q. Adams, Sec. of State, to Mr. Rush, minister at London, Nov. 6, 1817, House Report 302, 23 Cong. 1 sess. 3.)

XIV.

CONSULAR SERVICE.**1. Classes and Titles.**

The consular service of the United States consists of consuls-general, vice-consuls-general, deputy-consuls-general, consuls, vice-consuls, deputy consuls, commercial agents, vice-commercial agents, consular agents, consular clerks, interpreters, marshals, and clerks at consulates. The term "consular officer" includes consuls-general, consuls, commercial agents, deputy consuls, vice-consuls, vice-commercial agents, and consular agents, and none others. Consuls-general, consuls, and commercial agents are full, principal and permanent consular officers, as distinguished from subordinates and substitutes. Vice-consuls or vice-commercial agent, when in charge, are acting consuls or commercial agents for the time being and are principal consular officers. "Vice-consular officers," or "substitute consular officers," includes vice-consuls general, vice-consuls, and vice-commercial agents. "Subordinate consular officers" includes deputy consuls-general, deputy consuls, and consular agents. (Consular Regulations of the United States.)

2. Commercial Agents.

Commercial agents are by the laws of the United States full, principal and permanent consular officers. They differ from the latter only in rank or grade. The title of the office, as representing a distinct grade in the consular service, is peculiar to the service of the United States. Commercial agents in the United States service are to be distinguished from certain officers, described in international law by the same title, who are not usually regarded as entitled to the full rank and privileges of a consular officer. The exigencies of the public service have necessitated the appointment by the United States from time to time of commercial agents of this character, and the right to appoint them is at all time reserved; but such appointments have usually been made to countries whose governments have not yet been recognized by the United States and to which it was desired to send a confidential agent whose recognition need not be asked from the local government. Prior to the act of August 1, 1856, which reorganized the consular service, and raised commercial agents to the consular rank, the officers appointed by the United States with the title of commercial agent were usually those of limited powers. (Consular Regulations of the United States.)

3. Consuls.

A consul is not a diplomatic officer; is entitled to no diplomatic privilege; and is not exempt from criminal prosecution for offenses against the laws of the country in which he resides. The question of the right of a consular officer, principal or subordinate, to exercise consular privileges at a particular place depends upon the scope of his *exequatur*. Before an *exequatur* can be granted by the President recognizing a consul or vice-consul of any nation as entitled to exercise his official functions in this country, evidence should be laid before him that such officer is duly appointed, which could only be done, consistently with the views just expressed, by producing a commission, either directly from his government or else from the authorized agent; in which latter case it should be accompanied by the instrument investing such agent with the necessary authority. This power of appointment is frequently conferred upon consuls-general, with or without limitation or modification, but is not necessarily or uniformly attached to their office. In all cases of application for an *exequatur* for or in behalf of foreign consul, a commission emanating either from the head of his government or from a functionary known to possess the power of appointing consular officers, should be submitted to the President and recorded in the Department of State. Meanwhile, provisional permission for the exercise of consular functions may be given, and information of the fact duly furnished to the collector of customs at the proper port. Consuls are indeed received by the government from acknowledged sovereign powers with whom they have no treaty. But the *exequatur* for a consul-general can obviously not be granted without recognizing the authority from which his appointment proceeds as sovereign. "The consul," says Vattel (book 2, chap. 2, §34), "is not a public minister; but as he is charged with a commission from his sovereign, and received in that quality by them where he resides, he should enjoy, to a certain extent, the protection of the law of nations." No person holding an office under the United States will be recognized as a consular officer of a foreign state. (Mr. Frelinghuysen, Sec. of State, to Mr. de Bille, March 5, 1883.)

4. Powers and Duties.

Consuls represent the individual subjects or citizens of their respective nations when there is no other representation, and, when duly recognized, are competent parties to assert or defend the rights of property of their fellow-citizens or subjects in a court of admiralty

without special procuration; but they cannot receive actual restitution of property in controversy without a special authority. Various treaties have conferred upon foreign Consuls in the United States the power of determining disputes between masters and crews of the vessels of their nationality, and with the aid of the local authorities of arresting and returning deserters from such vessels. Without and independently of a treaty a Consul has no such judicial power. The act of apprehending and delivering the seamen under the Treaties and the acts of Congress to enforce them are judicial and not executive acts.

5. Shipment and Discharge of Seamen.

The act to enforce Treaty provisions respecting disputes between masters and crews was approved June 11, 1864. It is not to take effect as to the ships or vessels of any nation unless the President shall have been satisfied that similar provisions have been made by the other contracting party for the execution of the Treaty, and shall have issued his proclamation to that effect. On the 10th of February, 1870, proclamation was made under this act as to the Treaties with France, Prussia, and the other States of the North German Union, and Italy; and on the 11th of May, 1872, as to the Treaty with Sweden and Norway. This statute authorizes any court of record of the United States, or any judge thereof, or any commissioner appointed under the laws of the United States to take bail or affidavits, or for other judicial purposes whatsoever, to receive the application of the consular officer, to issue process against the person complained of, and if it shall appear, on his being returned before the magistrate, that he is not a citizen of the United States, and if a *prima-facie* case shall be made out that the matter concerns only the internal order and discipline of the foreign vessel, and does not affect directly the laws of the United States or the rights and duties of any citizen, then the magistrate shall commit the seaman to prison to abide the lawful order or control of the master: provided the expenses of the proceeding shall be paid by the consular officer, and the seaman shall not be detained for more than two months after his arrest.

6. Deserters.

The statute respecting the restoration of deserters was approved March 2, 1829, and was entitled "An act to provide for the apprehension and delivery of deserters from certain foreign vessels in

the ports of the United States." It provides "that on application of a consul or vice-consul of any foreign government, having a Treaty with the United States stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such government while in any port of the United States; and on proof, by the exhibition of the register of the vessel, ship's roll, or other official document, that the person named belonged at the time of desertion to the crew of said vessel, it shall be the duty of any court, judge, justice, or other magistrate having competent power, to issue warrants to cause the said person to be arrested for examination; and if, on examination, the facts stated are found to be true, the person arrested, not being a citizen of the United States, shall be delivered up to the said consul or vice-consul to be sent back," etc.

7. Jurisdiction.

Another series of Treaties grants to the consuls of the United States in the territories of certain Oriental powers exclusive jurisdiction over disputes between citizens of the United States, or over offenses committed by the citizens of the United States, or both. The first statute to affirm and regulate this jurisdiction was approved on the 11th of August, 1848. Attorney-General Cushing gave an exhaustive opinion on this statute. In 1860, a new statute was passed, which was amended in 1870. Under these various statutes, the following is the present condition of the law and practice in this respect: The Consuls and Commercial Agents of the United States at islands or in countries not inhabited by any civilized people, or recognized by any Treaty of the United States, are invested with power to hear and determine cases in regard to civil rights where the debt or damage does not exceed \$1,000 exclusive of costs, and also to issue warrants to arrest offenders, to arraign, try, and convict them, and to punish them to the extent of \$100 fine, or to imprisonment not to exceed sixty days. The provisions of the statute of 1860 apply directly to the consulates in China, and Siam. They apply in terms to Turkey, so far as they relate to crimes and offenses, and to civil cases, so far as the laws of Turkey permit. The authenticity of the English version of the Treaty of 1830 with Turkey, under which extritorial rights had been claimed and allowed, has been recently questioned. The operation of the statute of 1860 is extended to Persia, Tripoli, Tunis, Morocco, and Muscat; to Egypt and Madagascar, and all other countries with which Treaties may hereafter be made. The jurisdiction is to be exercised

in conformity with—1st, the laws of the United States; 2nd, with the common law, including equity and admiralty; and, 3rd, with decrees and regulations, having the force of law, made by the Ministers of the United States in such country respectively, to supply defects and deficiencies in the laws of the United States, or the common law as above defined. This power of the Ministers to make such laws and regulations is limited, by instructions from the Department of State, to acts necessary to organize and give efficiency to the courts created by the act.

The power of originating civil and criminal proceedings is vested by the statute in Consular officers exclusively. They can also, sitting alone, determine all criminal cases where the fine imposed does not exceed five hundred dollars, or the term of imprisonment does not exceed ninety days; and may impose fines to the extent of fifty dollars, or imprisonment, not exceeding twenty-four hours, for contempt committed in the presence of the court, or for failure to obey a summons. They may also, when of opinion that legal questions may arise in which assistance may be useful, or that a severer punishment is required, summon associates, not more than four in number, taken by lot from a list to be previously approved by the Minister, to sit with them on the trial, each of whom is to enter upon the record his judgment and opinion, and to sign the same; but the Consul himself gives the judgment in the case, whether it accords with that of his associates or not. In trials for capital offenses there must be four associates, who must all agree with the Consul, in order to convict, and the opinion must be approved by the Minister before there can be a conviction. They have exclusive jurisdiction in civil proceedings where the damage demanded does not exceed five hundred dollars. When the amount demanded exceeds five hundred dollars, or when the Consul thinks the case involves legal perplexities, and that assistance will be useful, he may summon to his aid not less than two nor more than three associates, to be selected from a list of persons nominated by the Consul, for the purposes of the act, to the Minister, and approved by him. They shall hear the case with him. The Consul, however, is to give the judgment. If they agree with him, the judgment is final. If they, or any of them, disagree, the opinions of all are to be noted on the record and subscribed by them, and the judgment of the Consul is then subject to appeal. Such a Consul cannot, in a suit by a person not a citizen of the United States, entertain a set-off further than to the extent of the claim asserted by the plaintiff, and cannot render a judgment against a person of foreign birth not a citizen of

the United States. An appeal may be taken in criminal cases from a decision of a Consul acting alone, where the fine exceeds one hundred dollars, or the time of imprisonment for a misdemeanor exceeds ninety days. If associates sit with the Consul in criminal proceedings (except capital), an appeal can be taken to the Minister only in case of disagreement between him and one of his associates. In civil proceedings, in cases arising before the 1st day of July, 1870, an appeal can only be taken to the Minister from cases in which associates sit with the Consul, and in which there is not an agreement of opinion.

In Tunis, Morocco, and Tripoli, citizens of the United States committing murder or homicide upon a subject of those powers are to be tried by a mixed court, at which the Consul is to "assist." The undisputed portion of the fourth article of the Treaty of 1830 with the Ottoman Porte provides for the supervision of the American Dragoman (Interpreter) in the hearing of all litigations and disputes arising between the subjects of the Sublime Porte and citizens of the United States. It is not in dispute that the usages observed towards other Franks are to be observed toward citizens of the United States. These usages are believed to be the following: 1. Turkish tribunals for questions between subjects of the Porte and foreign Christians. 2. Consular Courts for the business of each nation of foreign Christians. 3. Trial of questions between foreign Christians of different nations in the Consular Court of the defendant's nation. 4. Mixed tribunals of Turkish magistrates and foreign Christians at length substituted in part for cases between Turks and foreign Christians. 5. Finally, for causes between foreign Christians, the substitution at length of mixed tribunals in place of the separate courts; this arrangement introduced at first by the Legations of Austria, Great Britain, France, and Russia, and then tacitly acceded to by the Legations of other foreign Christians.

A provision in a Treaty that a Consul may *ex officio* administer upon the estates of citizens of his nationality dying within his jurisdiction without legal heirs there, gives no right of reclamation against the United States for the value of the property of such a decedent improperly administered on by a State Court, unless the Consul first exhausts his remedies at law to prevent such State administration.

8. Judicial Powers.

Judicial powers are not necessarily incident to the office of consul, although usually conferred in non-Christian countries. The Supreme

Court of the United States has held that the treaties with the Ottoman Empire of 1830 and 1862 concede to the United States the same privileges in this respect as are enjoyed by other Christian nations, which may be exercised by the consuls. In the revision of the Statutes the acts to carry into effect treaty provisions with certain non-Christian countries appear to be given, but in the enumeration of consular officers, upon whom judicial duties are devolved, consuls-general and vice-consuls were omitted, and this omission was rectified by an act of Congress approved February 1, 1876.

A consul has no authority, since the passage of the act of 1872, to demand and receive from the master of a vessel the money and effects of a deserter. The consular officers named in article 10 of the treaty of 1828 with Prussia, have exclusive jurisdiction in a claim made by the crew against the vessel for the recovery of wages. An act of Congress approved March 23, 1874, authorized the President, when he should receive satisfactory information that the Ottoman government, or that of Egypt, had organized new tribunals likely to secure to citizens of the United States the same impartial justice enjoyed under the exercise of judicial functions by diplomatic and consular officers, pursuant to the act of June 22, 1860, to suspend the operation of such act and to accept for citizens of the United States the jurisdiction of such new tribunals. The Department of State having been informed of the organization of such tribunals in Egypt, the President, upon March 27, 1876, issued a proclamation suspending, during the pleasure of the President, the operation of the act of June 22, 1860, within the dominions of the government of Egypt, so far as the jurisdiction of the new tribunals embraced matter cognizable by the minister, consuls, or other functionaries of the United States in said dominions, except as to cases in progress.

The question of the judicial authority of consuls over persons serving on American vessels in China has been construed as authorizing consular officers to assume jurisdiction where offenses are committed on shore by foreigners serving on board American merchant-vessels, when such foreigners are citizens or subjects of countries having no treaty engagements upon the subject with China, or when being subjects or citizens of treaty-powers, their own consuls decline to assume jurisdiction. Persons serving on board national vessels who have committed offenses on shore in China are held to be subject to the jurisdiction of the consul of the country under whose flag they are serving. A sentence of imprisonment rendered by a consular court cannot be legally executed beyond the territorial

jurisdiction of the court. Persons convicted at Smyrna or Constantinople cannot, therefore, be brought to the United States for imprisonment. A consul of the United States in China cannot entertain a criminal charge against a citizen or subject of another power.

9. Privileges and Immunities.

Consuls are not public ministers. Whatever protection they may be entitled to in the discharge of their official duties, and whatever special privileges may be conferred upon them by the local laws and usages, or by international compact, they are not entitled, by the general law of nations, to the peculiar immunities of ambassadors. (Wheaton's *Int. Law*, Dana's ed. §249, p. 324.)

Although consuls have no right to claim the privileges and immunities of diplomatic representatives, they are under the special protection of international law, and are regarded as the officers both of the state which appoints and the state which receives them. The extent of their authority is derived from their commissions and their *exequaturs*. It is believed that the granting of the latter instrument, without express restrictions, confers upon a consul all rights and privileges necessary to the performance of the duties of the consular office. Generally, a consul may claim for himself and his office not only such rights and privileges as have been conceded by treaty, but also such as have the sanction of custom and local laws, and have been enjoyed by his predecessors or by consuls of other nations, unless a formal notice has been given that they will not be extended to him. (Consular Regulations of the United States, 1896, §72, p. 27.)

“The law of nations does not of itself extend to consuls at all. They are not of the diplomatic class of characters to which alone that law extends of right. Convention indeed may give it to them, and sometimes has done so; but in that case the convention can be produced....Independently of (a special) law, consuls are to be considered as distinguished foreigners, dignified by a commission from their sovereign, and especially recommended by him to the respect of the nation with whom they reside. They are subject to the laws of the land indeed precisely as other foreigners are, a convention where there is one making a part of the laws of the land; but if, at any time, their conduct should render it necessary to assert the authority of the law over them, the rigor of those laws should be tempered by our respect for their sovereign, as far as the case will admit. This moderate and respectful treatment towards foreign

consuls it is my duty to recommend, and press on our citizens, because I ask it for their good, towards our own consuls, from the people with whom they reside." (Mr. Jefferson, Sec. For. Aff., to Mr. Newton, Sept. 8, 1791, 4 MS. Am. Let. 283.)

Consuls are undoubtedly entitled to great respect as bearing the commissions of their sovereign; but their duties are of a commercial nature and their public character subaltern; neither their persons nor their domiciles have heretofore been protected as have those of ambassadors and other public ministers. Instances are not wanting in which some of them have been brought within the jurisdiction of our courts. It is not known that it has ever yet laid the foundation of any charge of a breach of privilege, or infringement of public law, on the part of any of the governments of Europe, whose commissions these consuls may respectively have borne. (Mr. Monroe, Sec. of State, to Mr. Harris, chargé d'affaires at St. Petersburg (Petrograd) July 31, 1816, MS. Inst. United States Ministers, VIII. 89.) Where a consul, by being appointed chargé d'affaires, acquires diplomatic privileges, he becomes so invested as chargé d'affaires, not as consul. (Cushing, At. Gen., 1855, 7 Op. 342.)

10. Merchant Consuls.

A merchant consul, in all that concerns his trade, is liable in the same way as a native merchant. The character of consul does not give any protection to that of merchant when they are united in the same person. (Coppel v. Hall, 7 Wall. 542.)

The U. S. Consular Regulations of 1896 (§74, p. 29) provide that the privileges of a consul who engages in business in the country of his official residence, are, under international law, more restricted, especially if he is a subject or citizen of the foreign state. If his exequatur has been granted without limitations, he may claim the privileges and exemptions that are necessary to the performance of the duties of his office; but in all that concerns his personal status or his status as a merchant it is doubtful whether he can claim any right or privileges not conceded to other subjects or citizens of the state. He should, however, claim the same privileges and immunities that are granted to other merchant consuls in the same country.

11. Consular Treaty.

As a good example of the rights, privileges and duties of consular officers, a few articles of the Consular Convention of 1910 between the United States and Sweden may be cited:

“Article III. Consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents, citizens of the State by which they are appointed, shall be exempt from arrest except in the case of offenses which the local legislation qualifies as crimes and punishes as such; they shall be exempt from military billetings, service in the Regular Army or Navy, in the militia, or in the national guard; they shall likewise be exempt from all direct taxes—national, State, or municipal—imposed upon persons, either in the nature of capitation tax or in respect to their property, unless such taxes become due on account of the possession of real estate, or for interest on capital invested in the country where said officers exercise their functions, or for income from pensions of public and private nature enjoyed from said country. This exemption shall not, however, apply to consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, or consular agents engaged in any profession, business, or trade; but the said officers shall in such case be subject to the payment of the same taxes that would be paid by any other foreigner under the like circumstances.

“Article IV. When in a civil case a court of one of the two countries shall desire to receive the judicial declaration or deposition of a consul-general, consul, vice-consul, or consular agent, who is a citizen of the State which appointed him, and who is engaged in no commercial business, it shall request him, in writing, to appear before it, and in case of his inability to do so it shall request him to give his testimony in writing or shall visit his residence or office to obtain it orally, and it shall be the duty of such officer to comply with this request with as little delay as possible; but in all criminal cases, contemplated by the sixth article of the amendments to the Constitution of the United States, whereby the right is secured to persons charged with crimes to obtain witnesses in their favor, the appearance in court of said consular officers shall be demanded, with all possible regard to the consular dignity and to the duties of his office, and it shall be the duty of such officer to comply with said demand. A similar treatment shall also be extended to the consuls of the United States in Sweden, in the like cases.

“Article VI. The consular offices shall at all times be inviolable. The local authorities shall not, under any pretext, invade them. In no case shall they examine, or seize the papers there deposited. In no case shall those offices be used as places of asylum. When a consular officer is engaged in other business, the papers relating to the consulate shall be kept separate. Nor shall consular officers be

required to produce the official archives in court or to testify as to their contents.

“Article IX. Consuls-general, consuls, vice-consuls-general, vice-consuls, and consular agents shall have the right to address the authorities whether, in the United States, of the Union, the States, or the municipalities, or in Sweden, of the State, the Provinces, or the commune, throughout the whole extent of their consular district in order to complain of any infraction of the treaties and conventions between the United States and Sweden, and for the purpose of protecting the rights and interests of their countrymen. If the complaint should not be satisfactorily addressed, the consular officers aforesaid, in the absence of a diplomatic agent of their country, may apply directly to the Government of the country where they exercise their functions.

“Article X. Consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents of the respective countries may, as far as may be compatible with the laws of their own country, take at their offices, their private residences, at the residence of the parties concerned, or on board ship, the depositions of the captains and crews of the vessels of their own country and of passengers thereon, as well as the depositions of any citizen or subject of their own country; drawn up, attest, certify, and authenticate all unilateral deeds, acts, and testamentary dispositions of their countrymen, as well as all articles of agreement or contracts to which one or more of their countrymen is or are party; draw up, attest, certify, and authenticate all deeds or written instruments which have for their object the conveyance or encumbrance of real or personal property situated in the territory of the country by which said consular officers are appointed, and all unilateral acts, deeds, testamentary dispositions, as well as articles of agreement or contracts, relating to property situated or business to be transacted in the territory of the nation by which the said consular officers are appointed; even in cases where said unilateral acts, deeds, testamentary dispositions, articles of agreement, or contracts are executed solely by citizens or subjects of the country within which said consular officers exercise their functions.

“All such instruments and documents thus executed and all copies and translations thereof, when duly authenticated by such consul-general, consul, vice-consul-general, vice-consul, deputy consul-general, deputy consul, or consular agent under his official seal, shall be received as evidence in the United States and in Sweden as original documents or authenticated copies, as the case may be, and

shall have the same force and effect as if drawn up by and executed before a notary or public officer duly authorized in the country by which said consular officer was appointed; provided, always, that they have been drawn and executed in conformity to the laws and regulations of the country where they are intended to take effect.

“Article XI. The respective consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall alone take cognizance of any differences which may arise either at sea or in port, between the captains, officers, and crews, without exception, particularly in reference to the adjustment of wages and the execution of contracts. The local authorities shall not interfere, except when the disorder that has arisen is of such a nature as to disturb tranquility and public order on shore or in the port, or when a person of the country or not belonging to the crew shall be concerned therein. In all other cases the aforesaid authorities shall confine themselves to lending aid to the said consular officers, if they are requested by them to do so, in causing the arrest and imprisonment of any person whose name is inscribed on the crew list whenever, for any cause, the said officers shall think proper.

“Article XII. The respective consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents may cause to be arrested the officers, sailors, and all other persons making part of the crews in any manner whatever, of ships of war or merchant vessels of their nation, who may be guilty, or be accused of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To this end they shall address the competent local authorities of the respective countries, in writing, and shall make to them a written request for the deserters, supporting it by the exhibition of the register of the vessel and list of the crew, or by other official documents, to show that the persons claimed belong to the said ship's company. Upon such request thus supported, the delivery to them of the deserters can not be refused, unless it should be duly proved that they were citizens of the country where their extradition is demanded at the time of their being inscribed on the crew list. All the necessary aid and protection shall be furnished for the pursuit, seizure, and arrest of the deserters who shall even be put and kept in the prisons of the country, at the request and expense of the consular officers, until there may be an opportunity for sending them away. If, however, such an opportunity should not

present itself within the space of two months, counting from the day of the arrest, the deserters shall be set at liberty, nor shall they be again arrested for the same cause.

"If the deserter has committed any misdemeanor, and the court having the right to take cognizance of the offense shall claim and exercise it, the delivery of the deserter shall be deferred until the decision of the court has been pronounced and executed.

"Article XIII. All proceedings relative to the salvage of vessels of the United States wrecked upon the coasts of Sweden and of Swedish vessels wrecked upon the coasts of the United States, shall be directed by the consuls-general, consuls, vice-consuls-general, and vice-consuls of the two countries, respectively, and until their arrival by the respective consular agents, wherever an agency exists. In the places and ports where an agency does not exist, the local authorities until the arrival of the consular officer in whose district the wreck may have occurred, and who shall be immediately informed of the occurrence, shall take all necessary measures for the protection of persons and the preservation of wrecked property. The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if these do not belong to the crews that have been wrecked, and to carry into effect the arrangements made for the entry and exportation of the merchandise saved. It is understood that such merchandise is not to be subjected to any custom-house charges, unless it be intended for consumption in the country where the wreck may have taken place.

"The intervention of the local authorities in these different cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation.

"Article XIV. In case of the death of any citizen of Sweden in the United States or of any citizen of the United States in the Kingdom of Sweden without having in the country of his decease any known heirs or testamentary executors by him appointed, the competent local authorities shall at once inform the nearest consular officer of the nation to which the deceased belongs of the circumstances, in order that the necessary information may be immediately forwarded to parties interested.

"In the event of any citizen of either of the two Contracting Parties dying without will or testament, in the territory of the other Contracting Party, the consul-general, consul, vice-consul-general, or vice-consul of the nation to which the deceased may belong, or, in

his absence, the representative of such consul-general, consul, vice-consul general, or vice-consul, shall, so far as the laws of each country will permit and pending the appointment of an administrator and until letters of administration have been granted, take charge of the property left by the deceased for the benefit of his lawful heirs and creditors, and, moreover, have the right to be appointed as administrator of such estate.

"It is understood that when, under the provisions of this article, any consul-general, consul, vice-consul-general, or vice-consul, or the representative of each or either, is acting as executor or administrator of the estate of one of his deceased nationals, said officer or his representative shall, in all matters connected with, relating to, or growing out of the settlement of such estates, be in such capacities as fully subject to the jurisdiction of the courts of the country wherein the estate is situated as if said officer or representative were a citizen of that country and possessed of no representative capacity whatsoever."

"The citizens of each of the Contracting Parties shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament, or otherwise, and their representatives, being citizens of the other Party, shall succeed to their personal goods, whether by testament or ab intestato, and they may in accordance with and acting under the provisions of the laws of the jurisdiction in which the property is found take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein such goods are shall be subject to pay in like cases. As for the case of real estate, the citizens and subjects of the two Contracting Parties shall be treated on the footing of the most-favored nation."

12. In Eastern Countries.

In non-Christian countries, the rights of extraterritoriality have been largely preserved, and have generally been confirmed by treaties to consular officers. To a great degree they enjoy the immunities of diplomatic representatives, together with certain prerogatives of jurisdiction, the right of worship, and, to some extent, the right of asylum. These immunities extend to exemption from both the civil and criminal jurisdiction of the country to which they are sent, and protect their households and the effects covered by the consular residence. Their personal property is exempt from taxation, though

it may be otherwise with real estate or movables not connected with the consulate. Generally, they are exempt from all personal impositions that arise from the character or quality of a subject or citizen of the country. (Consular Regulations of the United States, 1896, §75, p. 29.)

13. In the Barbary States.

Consuls have diplomatic functions in the Barbary States. The United States consul is accredited to the Sultan of Morocco. His predecessors were accredited in the same way, and the consuls at Tripoli, Tunis, and Egypt are respectively accredited to the heads of the governments of those countries. (Mr. Seward, Sec. of State, to Mr. McMath, consul at Tangier, Dec. 30, 1868, Dip. Cor. 1868, II. 172.) In extreme cases, where the privileges of a consulate are invaded, the flag of the United States may be struck by the consul, and all friendly intercourse with the authorities of the residence suspended. (Mr. Webster, Sec. of State, to Mr. McCauley, April 20, 1852, MS. Inst. Barbary Powers, XIV. 132.)

14. Military Rank of Consular Officers.

Consuls-General rank with Commodores in the Navy or Brigadier Generals in the Army. Consuls and Commercial Agents rank with Captains in the Navy or Colonels in the Army. Vice-Consular officers, Deputy-Consular officers, Consular Clerks, and Consular Agents rank with Lieutenants in the Navy or Captains in the Army. (Halleck, ch. xi., sec. 7, cl. 2.)

15. Salutes.

It is the duty of the Consul-General, Consul, or Commercial Agent to accept the invitation and visit the flagship, and tender his official services to the commander. He is entitled once while the squadron is in port to a salute of nine guns if a Consul-General, of seven guns if a Consul, or of five guns if a Commercial Agent, which may be fired either while he is on board (which is unusual) or while he is being conveyed from the vessel to the shore; in the latter case he will face the vessel, and at the end of the salute acknowledge it by raising his hat. A Vice-Consul-General, a Vice-Consul, or a Vice-Commercial Agent, when in charge of the office and acting as Consul-General, Consul, or Commercial Agent, is entitled to the same salute as the titular officer.

XV.

TREATIES.

Treaties may be designated as primary sources from which international law has drawn its rules. Treaties may be defined as compacts between independent nations, depending for the enforcement of their provisions on the honor and the interests of the governments which are parties thereto.

1. Historical Development of Treaties.

International law developed, in the early days of medieval times, in view of treaties of alliance and peace, which were probably the only kinds of treaties concluded. Even Grotius, recognized as the father of international law, limited himself to the rights of war, and only later writers recognized distinctions between state treaties and private treaties; the former guarding public rights and duties, and the latter according and protecting private interests.

Historical facts evince the necessity of concluding state treaties whereby relations among civilized nations are established. State treaties, therefore, are the indication of the foreign relations of the states, and in their binding force are akin to the contractual relation of individuals, modifying the actions of the contracting parties of the treaty with respect to one another. States, similar to individuals, must submit to a jurisdiction, as otherwise no relation among them were possible. Originally state treaties aimed at mutual protection in times of war, prevention of wars, or promotion of commercial interests; but at the present time they are expressions of the international communion of the peoples and the resulting relative duties.

2. Oldest State Treaties.

An important example of a state treaty, designated as the oldest document of diplomacy, is the peace treaty between Rameses (Sesostris) II and the Khita ruler, which terminated the great Assyrian War. This treaty is remarkable, as it stipulates not only eternal peace under the protection of the respective state gods, but also an alliance against the foes of each contracting party. Commerce and industry of both peoples were to be secured, and criminals taking refuge in the neighboring country were to be returned to their native land. This peace treaty was carved on a silver plate, and was negotiated 1300 B. C.

Another important treaty is that concluded with the Latin Confederation. It was stipulated that peace should prevail between Romans and Latins as long as heaven and earth remained in their position. The treaty contained several provisions for defending mutual rights in case of war with a third party, a distribution of war booty, the forum for the adjudication of private disputes, and the regulation for awarding alternately command of the armies to the contracting powers in a war with a third power. The treaties were concluded with an oath and certain ceremonies, and were considered, as distinguished from formal contracts, as *pacta*.

No treaties were known to the Islam, living under the precept of making war against the infidels. Merely a truce was recognized, which, however, could extend over a long period. Not until the conquering fanaticism subsided were treaties, such as alliance, enacted between the Greek Emperor and the Sultan of Syria against the Crusaders, between the Caliph of Egypt, in 1166, with the King of Jerusalem, and, in 1191, between the latter and Saladin.

3. Objects of Treaties.

The most limited treaty stipulates the agreement to abstain from rendering assistance to the enemy of the other contracting party. There also appears a subsidy treaty (1101) between Henry I of England and the Count of Flanders, the latter agreeing to furnish a certain number of men against the payment of a liquidated amount.

The most important object for which treaties are concluded is to secure concerted action for maintenance of the balance of power. They have determined the status of territories, the fate of dynasties, and thereby preserved the balance of power which the Concert of Europe guards. Since the Westphalian Peace the general treaty system, which culminated in the preservation of the balance of power, was radically changed, and in order to arrive at an understanding of the development of the public law of Europe since that time, the various treaties subsequently concluded must be considered.

4. Peace of Westphalia 1648.

A preliminary Congress held at Westphalia in 1641 is the first example of an international convention dealing with the regulation of general political questions and simultaneously with the internal affairs of single states. It agreed to congresses to be held at Münster and Osnabrück, in Westphalia, in July, 1643, at which representatives

of Catholics and Protestants were present, resulting in the establishment of religious equality of the Catholic, Lutheran, and Reformed Churches in Germany. The tedious and turbulent negotiations reached their conclusion by the treaties concluded in 1648. To stay the progress of Germany towards national unity, three hundred and fifty German states were made independent of the Emperor, their federal chief, and the blow thus struck at the House of Austria as the temporal head of the Catholic body was made more effective by measures which paved the way for the growth of Prussia, its Protestant rival, as the natural leader.

From the Peace of Westphalia in 1648 to that of Utrecht, Louis XIV pursued the policy of triumphing over both branches of the House of Austria, and succeeded in this by an alliance with Sweden, the United Provinces, and the Protestant Princes of Germany.

5. In the **Treaties of Münster and Osnabrück**, Mazarin closed the Thirty Years' War, and in the Peace of the Pyrenees (1659), terminating the twenty years' war between France and Spain, the former received large additions of territory. A marriage contract was entered into between Louis XIV and Maria Theresa, who, in consideration of a dowry (which was never paid), renounced all her rights to the Spanish Crown and to the possessions incident thereto.

6. In the **Peace of Utrecht** (1713-1714) Philip was left in possession of the Spanish throne upon his renunciation of all rights to the Crown of France, coupled with like renunciations by the Dukes of Berry and Orleans to the claims of that of Spain. It was then declared to be the inviolable law that the two crowns should never be united under the same head. Great Britain received from France, then, an express recognition of the Hanoverian succession, and through her Parliament consented to the expulsion of the pretender from her soil and to various other stipulations. It is peculiar that the Treaty of Utrecht stripped Spain of even more than was originally proposed to take from her. Thus Philip's possessions in Italy, the Spanish Netherlands, and the Island of Sardinia were ceded to Charles of Austria, who had then become Emperor.

7. **The Peace of Carlowitz (1699)**. The peace of Carlowitz, after the annihilation of the Turkish Army by Prince Eugene, consisted of treaties concluded January 26th between the Sultan, the Emperor, the King of Poland, and Venice, stipulating inter alia the twenty-five years' truce with the Emperor and the surrender of suzerainty over Transylvania by the Sultan, acknowledging it to be an Austrian province.

8. **The Treaty of Nystadt.** In the Treaty of Nystadt, concluded August 30, 1721, Sweden ceded to Russia Livonia, Esthonia, Ingermanland, Riga, Reval, and numerous other towns and ports. This treaty was followed by the Treaty of Breslau, June 11, 1742, and the definite Peace of Berlin, July 28th, between Frederick II and Maria Theresa, as a result of which Prussia obtained Upper and Lower Silesia and the country of Glatz. The Treaty of Dresden, December 25, 1745, confirming that of Breslau, acknowledged the Grand Duke of Tuscany, the husband of Maria Theresa, as Emperor.

9. **The Peace of Aix-la-Chapelle (October 18, 1748)** between France, Great Britain, and Holland—Spain, Genoa, and Modena, being accessories—the war growing out of the Austrian succession, was closed by a general restitution of conquests and a renewal of treaties placing the combatants in the status quo ante.

10. **The Partitions of Poland (1772, 1793, and 1795.)** Under the pretext that internal discords of a smaller state endanger the security of neighboring nations, the Treaty of July 15, 1772, entered into between Russia and Austria and Russia and Prussia wrested a territory with five million inhabitants from Poland and divided it among the contracting powers in proportions agreed upon. The second partition appears in the form of treaties made between Russia and the King and Republic of Poland, July 13 and October 16, 1792, and of a treaty between Russia and Poland, September 25th of the same year. After the insurrection of 1784 had ended with the fall of Warsaw, the remainder of Poland was divided between Prussia, Austria, and Russia, who settled the boundaries of their respective acquisitions by a convention at St. Petersburg, on January 3 and October 25, 1795. Prussia held the capital with the territory as far as Niemen; Austria, Cracow, with the country between the Pilica, the Vistula, and the Bug; the rest was occupied by Russia.

11. **The First Peace of Paris and Congress of Vienna (1814).** After the abdication of Napoleon on April 11, 1814, the First Peace of Paris was embodied in the treaties, on May 30th, between Louis XVIII and each of the four great powers, in which France restricted her suzerainty to the territory within her limits, adding slight sections of land to the eastern and northern frontiers as possessed in 1792. The treaty is of importance, as it stipulates that all the powers engaged in the war should send plenipotentiaries to Vienna, where, in general convention, the peace treaty should be concluded. On the 11th of June the Congress came to an end,

having been in session for eleven days and having enacted rules of vital importance for the development of international law and having established a peace lasting uninterruptedly for forty years.

12. The Holy Alliance, 1815.

The successful intervention of the allied powers in the affairs of France was responsible for the formation of the Holy Alliance at Paris in September, 1815, guaranteeing mutual support and assistance to the contracting parties—Austria, Prussia, and Russia, and subsequently France. The object of this Alliance was to abolish the seat of representative governments in Europe, and to destroy the liberty of the press. The effect of this Alliance made itself felt in suppressing the Neapolitan Revolution in 1820, in the invasion of Spain by France in 1823 to overthrow the Constitution of the Cortes, and in the restoration of absolutism in the person of Ferdinand VII. England held aloof from what was considered an extreme and dangerous policy of intervention, and the Alliance received its check in the resistance offered by the United States against that policy of the new world as embodied in the Monroe Doctrine.

In 1827 Great Britain, Russia, and France delivered Greece from the dominion of the Ottoman Porte, as evidenced by the treaty of July 6th, resulting in a concerted action of the powers in destroying the Turkish fleet in the Bay of Navarino on the 20th of October.

In 1830 the powers intervened for the purpose of opposing the Belgic revolution, whereby the Union of Belgium with Holland, established at the Congress of Vienna in 1815, was dissolved. At the request of the King of the Netherlands in the treaty of November, 1830, Holland was awarded all territory belonging to her prior to 1790. Belgium received the remainder, with the exception of the Grand Duchy of Luxemburg. The perpetual neutrality of Belgium was finally established by the International Agreement of November 15, 1831.

13. Crimean War and Treaty of Paris.

The Crimean War and the Treaty of Paris in 1856 resulted in the preservation of the balance of power in eastern Europe by providing the independence and territorial integrity of the Ottoman Empire, the return of captured territory to Russia, the placing of Moldavia and Wallachia under the suzerainty of the Porte, the neutralization of the Black Sea, and the neutralization of the great

rivers of Europe, not included in the Regulation of 1815, for the purpose of commerce. This treaty is of special significance, inasmuch as Turkey is admitted into the family of nations.

14. Peace of Prague.

In the Peace of Prague (1866) Austria withdrew from the Confederation, enabling Prussia to form a new one in which she could be supreme. This League, known as the North German Confederation, encompassed the minor states, such as Hanover, Essen, Cassel, Nassau, Frankfort, Schleswig-Holstein, and Lauenburg.

15. Franco-Prussian Treaty.

In the treaty between Prussia and France in 1871, the North German Confederation finally triumphed over France and resulted in the welding of Germany into a single state under a new constitution, awarding to the King of Prussia the title of German Emperor. By the treaty concluded on May 10, 1870, at Frankfort, Alsace and Lorraine were ceded to Germany and a huge indemnity paid.

16. Congress of Berlin.

The Treaty of San Stefano and the Congress of Berlin in 1878, terminating the war between Russia and Turkey, reduced the territory of Bulgaria and divided this state into two parts. The part north of the Balkans constituted an autonomous principality under the suzerainty of the Sultan, while the part south of the Balkans was subjected to the direct authority of the Sultan but with administrative autonomy and a Christian governor-general. Austria received Bosnia and Herzegovina; Montenegro and Roumania were recognized as independent nations, and Serbia also under certain conditions; concessions were made to Greece, awarding her Janina and Thessaly, while Cyprus passed to Great Britain.

17. Conclusion of Treaties.

The Viennese Congress of 1815 was responsible for extending the domain of state treaties. While the right of concluding treaties by the chief executive and his plenipotentiaries is generally conceded, certain limitations are imported into this absolute power. The exercise of the treaty making power in states having a representative constitution is frequently limited by legally prescribed formalities, and often prevents the executive from ratifying international obli-

gations. It is therefore incumbent upon a contracting party to study the constitution of the other contracting party. While this checking of treaty making power maintains serious consequences from a political viewpoint, it is to be noted, as is the case in Great Britain, that as a rule Parliament exercises good judgment and abstains from asserting its rights whenever national security would be endangered. The competency and the manner of concluding treaties is usually regulated by the constitutions of the respective countries. The most important ones will be briefly enumerated.

Germany.

The German Empire regulates, by Article 11 of the Constitution of April 16, 1871, the question of making treaties, by conceding to the King of Prussia, as the German Emperor, the right to represent the realm, to conclude peace, to enter into alliances, and to make other treaties with foreign powers, to appoint ambassadors, and to receive the same. To declare war, however, is contingent upon the assent of the Federal Council, unless an attack is made on the territory. The treaties falling within jurisdiction of the Federal Legislature presuppose the consent of the Federal Council and necessitate the approval of the Diet. The treaties requiring the consent of the Legislature inter alia include expansion of territory, and reference is made to the treaty of 1871, incorporating Alsace-Lorraine by way of federal legislation. The indemnity paid by France in 1871 was approved by a series of federal laws determining its mode of application for purposes of defense and amelioration of conditions of returned soldiers. The right of the composing states of the German Empire to conclude treaties is, of course, limited to matters of a domestic nature.

Great Britain.

The conclusion of treaties in **England** is predicated on the principle enunciated by Blackstone, that the act of the royal authority with regard to foreign powers is the act of the whole nation. The will of the chief executive is exercised by the Secretary of Foreign Relations, who is responsible to the Crown. Treaties are concluded either by the Secretary with the resident ambassadors, or by British ambassadors with the powers to which they are accredited. The King has the power to despatch ambassadors, to receive the same without distinction as to rank and title, to delegate his power to the viceroy and general governors, as is the case in India. He is further authorized to conclude treaties and alliances with foreign states and

sovereigns, and as the King, according to the Constitution, is the highest authority, no other power in the realm has the right to postpone, resist, or avoid treaties, subject, however, to the responsibility of the participating ministers.

The political importance of Parliament, to which the ministers are responsible, has gradually grown to such an extent that it exercises an influence on the state treaties. The King in Parliament by this modern development of the law has almost exclusively acquired the right of legislation, whilst the old right of decreeing by the King in Council has suffered considerable restrictions. But even today Orders-in-Council are very frequent, and their influence is enhanced by the fact that in these times the right of decreeing the introduction of important rules is expressly reserved.

France.

Originally the right to make treaties by the King of France was modified by the national representatives designated as the General States (*Etats Généraux*). They took an active part in legislation, imposing taxes, and had jurisdiction in certain kinds of litigation. These *Etats Généraux* appeared on the political stage for the first time in the fourteenth century, and included the clergy, the nobility, and the citizenry. The first state treaty which received in France the approval of the General States is the one concluded in England in 1359, according to which Normandy, Anjou, Touraine, and the whole west of France were ceded. In Article 2 of the law of July 18, 1875, the right of the President to conclude peace, alliance, and commercial treaties is expressly defined. This article stipulates in substance that the President negotiates and ratifies treaties, that he informs the Chambers thereof as soon as the security of the state permits, and that treaties of peace, commerce, and those bearing on the finances of the state and relating to persons and property rights of citizens in foreign countries are not final until voted upon by the two Chambers. No cession, exchange, and expansion of territory can take place unless authorized by law.

Belgium.

In Belgium the King has a right to conclude treaties, and only treaties of a certain nature require the approval of the Chambers. Among the latter are those of a commercial nature and those which endanger the state and require for their validity the approval of the Chambers.

Netherlands.

In a similar manner the conclusion of treaties in the **Netherlands** is authorized. The King has a right in general to conclude treaties, but in certain cases the approval of the General States is required before the King can ratify such treaties. These exceptional cases involve treaties effecting the exchange or cession of territory, or bearing on legal rights.

Spain.

In **Spain** the right of the King to conclude treaties is considerably limited. The Spanish Constitution of March 19, 1812, stipulates in Section 131, No. 9, that the Cortes are authorized to approve treaties for offensive alliances, treaties for subsidies, and commercial treaties before their ratification. The Constitution of June 18, 1837, decrees in Article 48, No. 3, that a special law must authorize the King to ratify offensive alliance treaties, commercial treaties, and in general such treaties in which subsidies for foreign powers are agreed upon.

Italy.

The power of the King in **Italy** to conclude treaties is subject to similar limitations. The Constitution requires that the King is authorized to conclude peace, alliance, commercial, or other treaties, and that the same must be submitted to the Chambers consistent with the interest and security of the state. Treaties, however, which impose financial burden on the state or cause a change of territory are effective only with the approval of the Chambers.

Switzerland.

The Revised Federal Constitution of the **Swiss Federation** of May 29, 1874, bears on the question of state treaties. While acknowledging the sovereignty of the cantons, nevertheless the federal authority occupies a leading position and possesses important political powers. This Federation alone is authorized to declare war, to conclude peace, to make treaties and alliances, and to enter into a special custom and commercial treaties. The cantons have the right to make treaties as regards intercourse with neighboring powers and as regards the police of foreign countries; observing, however, the fact that such treaties should not interfere with the interest of the Federation.

United States.

The Constitution of the **United States**, Article II, section 2, clause 2, stipulates that "he (the President) shall have power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur."

"A treaty duly ratified is as much a part of the supreme law of the land as a statute. The later expression of the lawgivers will replace preceding law if inconsistent or repugnant, even if there is not an express repeal. While repeals by implication are not favored, where a later law entirely substitutes new provisions for the scheme of the earlier law, it is displaced by the later statute." (Knox, At. Gen., Oct. 10, 1901, 23 Op. 545, affirming 21 Op. 347.)

"A treaty, constitutionally concluded and ratified, abrogates all State laws inconsistent therewith. It is the supreme law of the land, subject only to the provisions of the Constitution." (Davis, Notes, U. S. Treaty Volume 1776-1887.)

The treaty entered into by President Washington November 19, 1794, with England may be recalled, which was accepted by the two-thirds majority of the Senate and was published and submitted to both Houses of the Congress. The request of the Lower House to submit the files was rejected by Washington, by virtue of the constitutional provision which vested the President and the Senate with treaty making powers. The House of Representatives agreed to the stipulations made by the President, but insisted that for such terms of treaties which could be executed only by way of legislation the approval of Congress is necessary.

In the treaty between the United States and Russia relating to the cession of Alaska, the President, with the approval of the Senate, assumed the obligation of the payment of \$7,200,000. A bill for the appropriation of the money was introduced and approved with the express stipulation that the Lower House had no influence on a state treaty in the absence of a violation of a constitutional provision.

18. Kinds of Treaties.

In addition to state treaties, so-called "improper" treaties are known, which neither originate in nor are supported by the respective states, but are merely the personal act of the highest executive. An example of this type of agreement is the Concordats, concluded between the temporal head of a state and the Pope to bring about the settlement of personal differences.

Other forms of improper treaties are those entered into by de-throned princes to effect their return to power, and similarly treaties concluded with ruling princes to maintain them in power. Finally, reference is made to treaties between the state and private persons as regards public laws, such as often concluded with private persons of European governments, especially England, as regards the sovereignty of territory obtained by such private persons from African rulers.

It is of interest to consider whether independent chiefs of savage tribes can cede to private citizens the whole or part of their states, with the sovereign rights which pertain to them, conformable with the traditional customs of the country. From the fifteenth century to early in the nineteenth century the rules of international law were regarded as being, to some extent, an exclusive privilege of Christian people for the establishment of regular relations between them. Pagan peoples were not considered as participating in the political community established by international law between Christians, and it is only since 1856 that Turkey was admitted into the family of nations. This view, however, gradually vanished, as every human being of necessity must be considered a member of the great human family.

The conditions necessary to enable a state to exist as such and to enter into treaties are principally that a certain number of families having a fixed abode associate and submit themselves to a common chief with the intention of providing for the safety of all. Accordingly tribes inhabiting certain territory and represented by a chief executive constitute independent states. Inasmuch as these tribes are independent states, it follows that these states or their representatives may make international treaties of every kind. History abounds with examples of this kind, and reference is made repeatedly to the treaty between the English Puritans and the chief of the Indians in 1620, to the treaty of the founders of the colony of New Hampshire concluded in 1639 with the Indians for the purchase of land, and also to the treaties made by William Penn with chiefs of the Indians.

19. Treaties Concluded in Times of War.

Among the treaties concluded in times of war may be mentioned "contribution" treaties, by which subjects of the enemy took over bonds and notes, which payments were to be made after a certain period. "Ransom" treaties, whereby on a stipulated ransom hos-

tile or neutral prizes were given up, were in vogue in the seventeenth century. While there are grounds for opposition against treaties of the last kind concluded with the enemy, it is generally understood that unless prohibited by law ransom treaties may be employed with neutrals.

Other treaties entered into in times of war include treaties of extradition as regards prisoners, treaties relating to the capitulation of troops, forts, and ships, and special importance is attached to treaties of truce concluded normally for a certain period and based on the retention of the status quo of the positions occupied by both belligerents. The subject of truce is further discussed elsewhere in this book.

20. Treaties Concluded by Whom.

According to the doctrines of international law, state treaties are entered into exclusively by sovereign states, although semi-autonomous states can exercise the same prerogative. Treaties are concluded by plenipotentiaries clothed with sufficient power, but, as indicated in the article on ratification, they must be finally ratified by the chief executive of a state. In times of war superior officers of the army and navy have the right to conclude treaties which have legal effect, even though special power by the state executive is not expressly conferred upon them. To this class belong especially the treaties of truce.

21. Form of Treaty.

The opening clause of treaties always sets forth that they were concluded in the name of the Trinity. In the case of treaties concluded with pagan nations, no reference to the Divinity is made, but wherever possible, if the treaty does not refer to the Trinity, it is drawn in the name of God.

22. Enforcement of Treaties.

Treaties were originally provided with an oath to insure the execution thereof; subsequently even hostages were seized to guarantee the execution of treaties. The most common form of insuring the enforcement of treaties is the so-called "guaranty" treaty, which embodies the duty assumed by the contracting parties to take recourse to armed forces in order to obtain the execution of the main treaty. Such treaties are entered into to create neutral states, such as Switzerland.

23. Interpretation of Treaties.

The interpretation of state treaties has received the attention of numerous writers, and the sum total of the varied and often contradicting opinions is that the construction of treaties should be equitable and not technical.

In his Commentaries Phillimore distinguishes between authentic, usual, and doctrinal interpretation. Authentic interpretation, in a strict sense of the word, is applicable to laws and not to treaties. Indirectly such interpretation may be applied to acts of the contracting parties which were precedent, concurrent, or subsequent to the conclusion of the treaty. The contracting parties may also agree on such authentic interpretation, which, as a matter of fact, however, would merely constitute a new treaty. Usual interpretation has its foundation in customs and precedents. This form of interpretation is rooted in the usual acceptance of terms and phrases familiar in the intercourse of nations and employed in drawing up treaties, and extends to conclusions which are omitted. Doctrinal interpretation resolves into grammatical and logical interpretation, and is based on a scientific construction of the terms of the treaty.

Several writers call attention to the necessity of a thorough and competent knowledge of the language in which the treaty is drawn, and point out that the words must be construed in the sense in which they are usually employed.

Above all, state treaties must be construed in bona fide form, and there can be no doubt that the civil rules of interpretation essentially apply to the construction of state treaties. Certain limitations, however, must be observed in this mode of construction, care being taken that the subject matters, objects, and effects in state treaties radically differ from those contained in private treaties.

In the case of obscure passages affecting the weal of the contractor and the people represented by him, a disadvantageous interpretation cannot be insisted upon. The analogous application of a treaty upon other than essentially indential conditions can be claimed at least when a contrary intention of the contracting parties cannot be established.

Phillimore finally suggests, in case of dispute, to take recourse to arbitrators who are to construe expressions and phrases in the sense defined by international customs. Furthermore, the construction of words should be made grammatically, applying to the words the sense in which these words usually are employed. In case this interpretation does not suffice to obviate obscurities and ambiguities, log-

ical interpretation as dictated by common reasoning must solve the existing difficulties.

In all such cases it is obvious that the evincible intention of the parties is to be considered. When a thing is generally promised, a medium quality is to be assigned thereto in case of doubt, and the principle must be recognized that duties, in case of doubt, should be as little oppressive as possible.

In the interpretation of treaties the following terms are employed:

Protocol signifies a preliminary draft constituting the minutes of the conference.

Parafé is employed as a term designating the initialing at the margin of a proposed treaty by the negotiators.

Recez is a term applied to the act of a congress or diet to reduce to writing the result of its deliberations.

Declaration embodies the promulgation of rules of international action. As an example the Declaration of Paris may be cited, stating rules of maritime law.

Separate articles or clauses added to duly executed and ratified treaties are incorporated in a separate instrument but construed in conjunction with the treaty to which they refer.

Concordat signifies a compact concluded by the Holy See. The Pope, although divested of territorial possessions or subjects, has diplomatic representatives at many governments, and has frequently acted as mediator in international disputes. His official views are published as decrees, encyclicals, pastorals, or constitutions.

24. Ratification of Treaties.

Ratification imparts to a treaty its validity and has retroactive force, carrying the effect of the treaty back to the day on which it was signed by the plenipotentiaries. Ratification is effected by the chief executives subsequent to having been entered into by the properly authorized plenipotentiaries. The conditions under which certain treaties may be ratified by the chief executive have been discussed in the articles relating to the Conclusion of Treaties, rendering further treatment of this subject superfluous.

25. Abrogation of Treaties.

A treaty may be modified or abrogated under the following circumstances:

- (1) When the parties mutually consent.
- (2) When continuance is conditioned upon terms which no longer exist.

- (3) When either party refuses to perform a material stipulation.
- (4) When all the material stipulations have been performed.
- (5) When a party having the option elects to withdraw.
- (6) When performance becomes physically or morally impossible.
- (7) When a state of things which was the basis of the treaty, and one of its tacit conditions, no longer exists. (Wharton, *Int. Law Digest*, II, 58, citing Whart. *Com. Am. Law*, Art. 161).

It is a common practice to insert in treaties a clause indicating the manner in which treaties may be terminated by notice of a certain duration given by one contracting party to the other. In the United States a question has arisen as to how this notice, when given by the President, should be authorized. Usually it has been given under the authority of a joint resolution of Congress.

According to the older rights of war, all state treaties not expressly concluded for the war were terminated by the same. The conception of Bluntschli, that war merely interrupts the operation of most of the treaties, and that their validity is not dependent upon the continuance of the state of peace, responds to the international legal views of to-day. War merely eliminates the legal relation in so far as the conditions of war make this necessary, and some treaties perish when the premises have been destroyed.

Recent examples of the abrogation of treaties are the termination of the treaties with Russia and Spain. In the former case the discrimination made by Russia against citizens of the United States of Jewish faith was the basis of a series of protests raised by the United States, and in view of the refusal of Russia to heed these protests, by a joint resolution approved December 21, 1911, the treaty of commerce and navigation between the United States and Russia, concluded on the 18th day of December, 1832, was terminated.

The treaty of friendship and general relation with Spain, concluded July 3, 1902, and ratified April 14, 1903, has been abrogated, and in accordance with Article 30, notice has been given to terminate the treaty on May 8, 1919. Abrogation of a treaty means a certain disruption of friendship between two nations which naturally must influence their mutual trade interests. The status of commerce and the status of the citizens in the two affected countries would be treated, however, in accordance with international law.

International law is a part of the laws of the United States and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions depending thereon are

duly presented for their adjudication. For this purpose, in the absence of a treaty and controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations as evidenced in the works of jurists and commentators who have made themselves peculiarly well acquainted with the subject.

Thus even without a treaty the interests of two states whose treaties have been abrogated would be fully protected under the well-established international rules.

XVI.

TREATIES OF THE UNITED STATES.

On the 29th day of November, 1775, Congress appointed a "Committee of Secret Correspondence," whose duty it would be to correspond with the friends of the colonies in other parts of the world. March 3, 1776, Silas Deane was instructed to go to France and enter into communication with M. de Vergennes, and to ascertain, if possible, whether, if the colonies should be forced to form themselves into an independent State, France would . . . enter into any treaty or alliance with them for commerce or defence, or both. The instructions were signed by Dr. Franklin, Benjamin Harrison, John Dickinson, Robert Morris, and John Jay.

On the 17th day of September, 1776, Congress took into consideration the plan of treaties to be proposed to foreign nations, with the amendments agreed to by the Committee of the Whole, and adopted a plan for the treaties to be proposed to the King of France. This remarkable state paper contains the germ of many of the provisions of subsequent treaties of the United States.

In one respect it was many years in advance of provisions actually incorporated into any Treaty. First it stipulated the status of the citizens, and then the commerce. Dr. Franklin Silas Deane and Thomas Jefferson were originally selected by the Continental Congress to conclude Treaties with the European Powers. Thomas Jefferson had declined, and Arthur Lee was elected in his place. The commissioners concluded a Treaty of Alliance and a Treaty of Amity and Commerce with the King of France. Other Treaties followed with Netherlands in 1782, and with Sweden in 1783. Then the Treaty of Peace with Great Britain in 1783, to which the names of Adams, Franklin, and Jay were attached under a special power. Then the Treaty of Amity and Commerce with Prussia in 1785, and in 1787 a Treaty of Peace and Friendship with Morocco, and of a Consular Convention with France in 1788.

All these Treaties secured the recognition of the Independence of the United States, and also regulated a commercial and political relation between the United States and other powers. The evils of war were lessened by treaty arrangements, that in case war should break out, time should be given to the citizens of each in the territories of the other to close their business and remove their properties, or that, should differences arise, resort should not be had to force until a friendly application should be made for an arrangement.

A restraint was imposed upon private war by provisions forbidding the citizens of either Power to accept commissions or letters of marque from enemies of the other Power when at war; and the acceptance of such commissions or letters was declared to be an act of piracy, which placed the offender beyond the claim of national protection.

The rights of neutrals to maintain and carry on their commerce and trade on the high seas during time of war were fully recognized. For this purpose articles which were to be held to be contraband of war were expressly defined and limited; and in the Treaty of 1785 with Prussia, which bears the signature of John Adams, Dr. Franklin, and Jefferson, it was even agreed that no articles should be deemed contraband, so as to induce confiscation, or condemnation, and a loss of property to individuals. It was further agreed that Free ships should make free goods; and that neutral goods found in an enemy's ship should not be confiscated if they had been put on board before the declaration of war, or within such short period thereafter that an ignorance of the state of war might fairly be implied.

Precise rules were laid down to be observed in the visit of neutral vessels on the high seas, and humane regulations were made respecting vessels on which articles contraband of war should be discovered.

"To prevent the destruction of prisoners of war by sending them into distant and inclement countries or by crowding them into close and noxious places," regulations were made for their treatment; and it was agreed that women and children, scholars, and cultivators, "all others whose occupations are for the common subsistence and benefit of mankind," should be allowed to continue their respective employments in time of war; that merchant and trading vessels employed in rendering the necessities of human life more easy to be obtained, should be allowed to pass unmolested in such time, and that no commissions should be granted to private armed vessels.

The power of the new nation whose existence had been recognized by these Treaties, to regulate and control its commercial relations with Foreign Powers was uniformly asserted in this series of Treaties. They placed each of the other Powers, in respect of commerce and navigation within each and every State, on the footing of the most favored nation; and it was agreed with Prussia that the ports of each Power should be open to the other; and that the duties, charges, and fees, to be imposed by each upon articles the growth, produce, or manufacture of the other, should be only such as should be paid by the most favored nation.

In the articles affecting the relations between the United States and the several States, these early Treaties asserted the nationality of the United States in a no less marked manner.

They prohibited the exaction in any State of the *Droit d'Aubaine* or other similar duty. They allowed aliens to hold personal property and to dispose of it by testament, donation, or otherwise, and to succeed to it, and they prohibited the exaction in such case by any State of dues, except such as the inhabitants of the country were subject to. They allowed aliens, without obtaining letters of naturalization, to inherit real estate and things immovable in every State, but in such case the Prussian alien was required to sell the real estate and withdraw the proceeds, which he was to be permitted to do without molestation; and in case of withdrawal no *droit de detraction* was to be exacted.

The right to aliens to frequent the coasts and countries of each and all the several States, and to reside there and to trade in all sorts of produce, manufactures, and merchandise was granted by the national government; and the States were prohibited from imposing upon such aliens any duties or charges to which the citizens of the most favored nation were not made subject. Resident aliens were also assured against State legislation to prevent the exercise of an entire and perfect liberty of conscience, and the performance of religious worship; and, when dying, they were guaranteed the right of decent burial, and undisturbed rest for their bodies.

The Consular Convention concluded with France by Jefferson maintained a yet wider supremacy for the national authority. It authorized French Consuls to administer, in certain cases, upon the estates of their deceased countrymen in the several States; to exercise police over all the vessels of their nation in whatever American port they might discharge their functions; to arrest the officers or crews of such vessels; to require the Courts to aid them in the arrest of deserters; and it even elevated them into judges, and

authorized them to determine all differences and disputes arising between their countrymen in the United States.

The same statesmen contemplated at one time a postal convention between France and the United States. A scheme was submitted by the French Minister; after considering which Jay submitted a counter proposal. But nothing further appears to have been done. Had the scheme been carried out it would have anticipated by half a century the modern international postal conventions of the United States.

The several Treaties and Conventions, thus negotiated, have served as the basis or model of many of the commercial and general conventions entered into by the United States since the adoption of the Constitution.

The Treaty negotiated in London, in 1794, during the administration of President Washington, and commonly known as Jay's Treaty, contained several new features, some of which have since been adopted in other Treaties.

This Treaty, the first concluded with a Foreign Power under the new form of government, recognized the right of the United States, which had been inserted in the Treaties concluded under the old form of government, to authorize aliens to hold and dispose of real estate in the several States. It aimed to establish, as far as the British monopoly of that day would permit, reciprocity in trade on the American continent; and it declared that by reciprocity it was "intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favorable to friendship and good neighborhood." It made reciprocal provisions for the equalization of import and export duties. It provided a mode for settling by arbitration any differences which had arisen between the two powers; and it also declared that it was "unjust and impolitic that debts and engagements contracted and made by individuals, having confidence in each other, and in their respective government, should ever be destroyed or impaired by national authority on account of national differences;" and it, therefore, provided that there should be no confiscation or sequestration of debts, in event of war between the parties. By it the parties agreed that an innocent neutral vessel, approaching a blockaded port, without knowledge of the blockade, should be warned and turned away without detention, and without confiscation of the vessel, or of the cargo unless contraband. It required each party to bring to the notice of the other any causes of complaint it might have before proceeding to the extremities of reprisals or of war;

and it made provisions to a limited extent, for the extradition of persons charged with the commission of crimes.

The Treaty of 1795, concluded with Spain during the same administration, provided that the vessels or effects of citizens of either Power should not be embargoed or detained by the other for any purpose; that the courts of justice should be open alike to citizens of each Power; that seizures of the persons of citizens of one Power by the authorities of the other within its jurisdiction, were to be made and prosecuted under the ordinary forms of law, and that the persons so arrested were to have the right to employ such advocates or attorneys as they pleased, who were to have the right of access to them, and of being present at all examinations and trials, all of which engagements have since been entered into with other Powers.

During the administration of the elder Adams, two Treaties of note were made. The first, concluded with Prussia, in 1799, extended the principal provisions in the Treaty of 1785 with that power, but, in doing it, several features of the early Treaty disappeared. The second was the Treaty concluded with France in 1800, which put an end to a state of quasi war between France and the United States.

The construction put by President Washington on the agreement of guaranty contained in the 11th article of the Treaty of 1778 with France, together with the conclusion of the Treaty of 1794 with England, had affected the relations of the two countries to such a degree that, in 1798, Congress had, by law, assumed to exonerate the nation from further obligation to observe the Treaties with France; and the Attorney-General of 1800 restored the good relations; but in the amendments on each side the old Treaties entirely disappeared. The subject will be further considered hereafter. This Treaty, although concluded during the administration of President Adams, was finally proclaimed by Jefferson after he became President.

By far the most important Treaty, in its results, concluded during the administration of President Jefferson, was the Treaty of 1803 with France, whereby Louisiana was annexed to the United States. This was the first Treaty which extended the territorial dominion of the United States, and which provided for the admission of aliens "to the enjoyments of all rights, advantages, and the immunities of citizens of the United States."

The subject of the Slave-Trade first appears in the Treaty of Peace with Great Britain, concluded in 1814, at Ghent, during the administration of President Madison. It was declared there that "the

traffic in slaves is irreconcilable with the principles of humanity and justice." John Quincy Adams, James A. Bayard, Henry Clay, Jonathan Russell, and Albert Gallatin subscribed this declaration on the part of the United States.

At the close of the wars of Napoleon, the Treaty of 1795 with Spain alone, of all of the commercial Treaties, survived. President Madison contemplated using the opportunity to mould all the Treaties of this nature into a general system. Mr. Monroe, in an early stage of negotiations with Holland, for this purpose, informed the Dutch Minister at Washington that "the Treaties between the United States and some of the Powers of Europe having been annulled by causes proceeding from the state of Europe for some time past, and other Treaties having expired, the United States have now to form their system of commercial intercourse with every Power, as it were, at the same time." But the only general commercial Treaties which Monroe succeeded in concluding, either as Secretary of State under President Madison, or as President with John Quincy Adams as Secretary of State, were the Treaty of 1815 with Great Britain, the limited arrangements made with France in 1822, and the Treaty with Colombia in 1824.

In that Treaty with Great Britain, it was for the first time agreed that no higher or other duties or charges should be imposed in any of the ports of the United States on vessels of another Power than those payable in the same ports by vessels of the United States; that the same duties should be paid on the importation into the United States of any articles the growth, produce, or manufacture of a foreign Power, whether such importation should be made in vessels of the United States or in vessels of that Power, and that in all cases where drawbacks were or might be allowed upon the re-exportation of any goods the growth, produce, or manufacture of either country respectively, the amount of the drawback should be the same whether the goods should have been imported in American vessels or in vessels of the Foreign Power. How frequently these principles have since been recognized in Treaties of the United States, an examination of the Index following these Notes will show.

The Convention with Colombia was the first of a long series of Treaties of Amity and Commerce with the several American States, of Spanish or Portuguese origin. It contained, in addition to most of the liberal provisions already noted, an agreement which has since been incorporated into many other Treaties, that infractions of the Treaty by citizens of either party should not interrupt the harmony and good correspondence between the two nations.

The most important Treaty made during the administration of President Monroe was the Treaty for the acquisition of Florida, concluded with Spain in 1819. Another important Convention was concluded in 1818, in London, by Mr. Gallatin and Mr. Rush, for the purpose, among other things, of settling the disputes which had arisen after the Treaty of Ghent, respecting the fisheries. In this the United States "renounced forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's Dominions in America not included in the above-mentioned limits," that is, the limits described in the Treaty.

Many commercial Treaties were concluded during the administrations of President Jackson and President Van Buren, through which the principles, which had become part of the policy of the United States, were extended in every quarter of the globe. By the former administration also, long-pending differences with France were set at rest by a Convention signed July 4, 1831; and a Treaty was concluded with the Ottoman Porte, under which, for nearly forty years, it was not doubted that the citizens of the United States within the dominions of the Porte enjoyed certain rights of extraterritoriality. The doubts which have since arisen will be considered hereafter.

During the administration of President Tyler, Caleb Cushing as Plenipotentiary, negotiated a Treaty by which political relations were for the first time established between the United States and the Emperor of China. "All questions in regards to rights, whether of property or persons, arising between citizens of the United States in China, shall be subject to the jurisdiction and regulated by the authorities of their own Government."

The same administration also brought to a close the long-pending disputes about the Northeastern Boundary, and by the same Treaty made arrangements with Great Britain for the extradition of persons accused of crimes. With the exception of the clause in "Jay's Treaty," respecting murder and forgery, this is the first of a long series of Treaties for a similar purpose. The first international postal arrangement also appears to have been concluded during this administration.

President Polk carried out with assiduity the policy of the nation by extending the number of its Treaties for the regulation of commerce and navigation, for the abolition of unjust taxes, and for the regulation of international postal relations, and he added to the

national domain by the Treaty of Peace with Mexico, and concluded a treaty with Great Britain, which was intended on the part of the United States to be a final settlement of the disputed Northwestern Boundary.

During President Taylor's short administration several Treaties of commerce were entered into with other Powers. The Secretary of State (acting as the Plenipotentiary of the United States) signed a Treaty with Great Britain (commonly known as the Clayton-Bulwer Treaty) in which the United States agree not to obtain any exclusive control over the Ship-canal which it was then supposed would soon be constructed through the territories of Nicaragua.

The administration of President Fillmore furnished a form of a Consular Convention which has been adopted as the basis of all subsequent conventions of that nature. Its defects are noticed hereafter. It bore the signature of Edward Everett, then Secretary of State.

The Crimean war, which took place during the administration of President Pierce, left its mark on the Treaties of the United States in agreements with Russia, the Two Sicilies, and Peru, respecting the rights of neutrals at sea. Treaties of Commerce, Consular Conventions, and Extradition Treaties were negotiated and concluded with various powers under the direction of Wm. L. Marey, as Secretary of State; a Treaty was concluded for reciprocal trade with Canada, and for the enjoyment of the Canadian Fisheries; diplomatic intercourse was opened with Japan; and Arizona was acquired by Treaty with Mexico.

President Buchanan released the commerce of the United States from the Danish dues at the Sound and Belts, made wider and broader the friendly relations with Japan, and he added to the number of the Treaties for the regulation respectively of commerce, of extradition, and of international postage.

William H. Seward was the Secretary of State during the administrations of President Lincoln and of President Johnson. Under his direction of the Department of State, the Treaties of Commerce, and the Consular and Extradition Conventions were widely extended. A Treaty was entered into for the suppression of the African Slave-Trade, in which, for the first time since the adoption of the Constitution, it was agreed that an alien might sit as a judge in a court holding its sessions within the territories of the United States. Several Treaties were made securing the recognition of the right of expatriation and naturalization, and the protection of Trade-Marks

was also made the subject of a Treaty. The relations with China, too, were essentially modified.

During the administration of President Grant the Department of State, under the direction of Hamilton Fish, carried out the previous policy of the United States in new Treaties for regulating the commerce of the country, for the extradition of criminals, for the naturalization of aliens, for the protection of trade-marks, for defining the powers and jurisdiction of Consuls, and for the protection of citizens in Foreign countries. The Treaty which has become known as the Treaty of Washington was signed in that city on the 8th day of May, 1871, by Mr. Fish, Mr. Justice Nelson, Robert C. Schenck, E. R. Hoar, and George H. Williams, as High Commissioners on the part of the United States, and by Earl de Grey and Ripon, Sir Stafford Northcote, Sir Edward Thornton, Sir John A. McDonald, and Montague Bernard, as High Commissioners on the part of Great Britain. It provides for the adjustment of outstanding differences with Great Britain, which were many and grave, by a series of arbitrations. The success, in the midst of great difficulties, which has attended the conduct of these international trials, may lead even persons who are not optimists, to hope that a way may be found for the peaceful solution of many sorts of international differences, which have hitherto been left to be solved by the sword. The policy of the United States is well established to settle national disputes and individual claims by arbitration when possible. (Treaties and Conventions between the United States and other Powers, 1776-1887, pp. 1220-1227).

**TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS and
AGREEMENTS between the United States of America and
Other Powers.**

Subject	Signed	Proclaimed
Amelioration of the Condition of the Wounded in Time of War..	August 22, 1854	July 26, 1882
Bureau of Weights and Measures..	May 20, 1875	September 27, 1878
Protection of Industrial Property..	March 20, 1883	June 11, 1887
Protection of Submarine Cables...	March 14, 1884	May 22, 1885
International Exchange of Documents	March 15, 1886	January 15, 1889
Immediate Exchange of Documents	March 15, 1886	January 15, 1889
Protocol Respecting Execution of Convention Relating to Protection of Submarine Cables.....	May 21, 1886	
Declaration Interpreting Convention Relating to Protection of Submarine Cables.....	December 1, 1886	May 1, 1888

Subject	Signed	Proclaimed
Protocol Putting Convention Relating to Protection of Submarine Cables into Effect.....	July 7, 1887	May 1, 1888
General Act for the Repression of the African Slave Trade.....	July 2, 1890	April 2, 1892
Deposit of Ratifications.....	February 2, 1892	
Formation of an International Union for the Publication of Customs Tariffs.....	July 5, 1890	December 17, 1890
Supplementary Industrial Property. Adoption by the United States of the Additional Articles of the Geneva Convention as a Modus Vivendi During the War with Spain	April 15, 1891	June 22, 1892
Adhesion of the United States to the Convention Regulating the Importation of Liquors into Africa	May 13, 1898	
First Hague Peace Conference Conventions:		
Pacific Settlement of Disputes.....	July 29, 1899	November 1, 1901
Launching Projectiles.....	July 29, 1899	November 1, 1901
Adaption to Maritime Warfare of the Principles of the Geneva Convention	July 29, 1899	November 1, 1901
Laws and Customs of War on Land	July 29, 1899 .	April 11, 1902
Additional Act for the Protection of Industrial Property.....	December 14, 1900	August 25, 1902
Final Protocol Entered Into at the Conclusion of the Boxer Troubles in China in 1900.....	September 7, 1901	
Convention Between the United States and Other Powers on Literary and Artistic Copyrights	January 27, 1902	April 9, 1908
Arbitration of Pecuniary Claims...	January 30, 1902	March 24, 1905
International Sanitary Convention (Paris)	December 3, 1903	May 18, 1907
Repression of Trade in White Women	May 18, 1904	June 15, 1908
Exemption of Hospital Ships from Payment of Dues.....	December 21, 1904	May 21, 1907
International Institute of Agriculture	June 7, 1905	January 29, 1908
New Agreement Between China and Certain Powers for the Whangpu Conservancy	September 27, 1905	
International Sanitary Convention (Central and South America) ..	October 14, 1905	March 1, 1909
General Act of the International Conference at Algeciras.....	October 14, 1905	March 1, 1909
International Red Cross Convention for the Amelioration of the Condition of Wounded of the Armies in the Field.....	July 6, 1906	August 3, 1907
Importation of Spirituous Liquors Into Africa.....	November 3, 1906	December 2, 1907

Subject	Signed	Proclaimed
Unification of the Pharmacopoeial Potent Drugs.....	November 29, 1906	
International Office of Public Health	December 9, 1907	November 17, 1908
Second Hague Peace Conference Conventions, 1907:	October 18, 1907	February 28, 1910
I. Pacific Settlement of Interna- tional Disputes.....	October 18, 1907	February 28, 1910
II. The Limitation of the Em- ployment of Force for the Recovery of Contract Debts	October 18, 1907	February 28, 1910
III. Opening of Hostilities.....	October 18, 1907	February 28, 1910
IV. The Laws and Customs of War on Land.....	October 18, 1907	February 28, 1910
V. Rights and Duties of Neu- trals in Land War.....	October 18, 1907	February 28, 1910
VIII. The Laying of Automatic Submarine Contact Mines	October 18, 1907	February 28, 1910
IX. Bombardment by Naval Forces in Time of War..	October 18, 1907	February 28, 1910
X. The Adoption of the Prin- ciples of the Geneva Con- tion to Naval War.....	October 18, 1907	February 28, 1910
XI. Right of Capture in Naval War	October 18, 1907	February 28, 1910
XIII. Rights and Duties of Neutral Powers in Naval War....	October 18, 1907	February 28, 1910
XIV. Declaration Prohibiting the Throwing of Projectiles and Explosives from Bal- loons	October 18, 1907	February 28, 1910
Final Act, Second Peace Conference Signatures and Reservations, Sec- ond Peace Conference.....	October 18, 1907	February 28, 1910
Conventions concluded at the Cen- tral American Peace Confer- ence, 1907:		February 28, 1910
Preliminary Protocol.....	December 20, 1907	
General Treaty of Peace and Amity Additional Treaty of Peace and Amity	December 20, 1907	
Convention for Establishment of a Central American Court of Justice	December 20, 1907	
Additional Protocol to the Conven- tion for the Establishment of a Central American Court of Justice	December 20, 1907	
Extradition Convention.....	December 20, 1907	
Convention for the Establishment of an International Central American Bureau.....	December 20, 1907	
Convention for the Establishment of a Central American Pedagogi- cal Institute.....	December 20, 1907	
Convention Concerning Future Cen- tral American Conference.....	December 20, 1907	
Convention on Communications...	December 20, 1907	

XVII.

MOST-FAVORED-NATION CLAUSE.

The most-favored-nation clause in treaties expresses protection against the wilful preference of the commercial interests of one nation over the other. It grants the same allowances and the same privileges which have been conceded to other nations; in other words, it means the expression of equality in international treatment. It concedes the same right to every favored nation. The most-favored-nation clause binds both of the contracting parties. It must be so construed and has been so construed by all authorities.

It is a well established fact that the most-favored-nation clause, according to international law, means reciprocal concessions. This clause ordinarily binds the high contracting parties to obtain and accord mutual rights such as conferred upon other favored nations, and also rights which will originate from subsequently concluded treaties. It was wisely stated by Mr. Jefferson, Secretary of State, that in all our treaties it would be best to have but a single article, and that is the most-favored-nation clause, or, in diplomatic terms, "*gentis amicissimae*":

"Indeed, we are infinitely better without such treaties (i. e. treaties of commerce) with any nation. We can not too distinctly detach ourselves from the European system, which is essentially belligerent, nor too sedulously cultivate an American system, essentially pacific. But if we go into commercial treaties at all, they should be with all, at the same time, with whom we have important commercial relations. Perhaps, with all of them, it would be best to have but the single article *gentis amicissimae*, leaving everything else to the usages and courtesies of civilized nations." (Mr. Jefferson to President Madison, Mar. 23, 1815, 6 Jefferson's Works, 453.)

XVIII.

MONROE DOCTRINE.

The remoteness of the American continent from Europe has established a natural division between their interests. The doctrine of Washington not to incur any entangling alliances was further strengthened by the principles enunciated by President Monroe, to consider the extension of the system of European nations to the

American hemisphere as a danger to peace and safety. He further emphasized that the American continent can not be considered subject for future colonization by any European power.

These principles, collectively termed the Monroe Doctrine, grew into existence in the face of attempts by the Holy Alliance (see article on Treaties) to restore the former colonies of Spain to her. The Monroe Doctrine has never been sanctioned by legislative action, nor has it been accepted as a rule of international law; it is, however, strictly adhered to and has been recognized by all nations. The effects of the Doctrine have been generally construed that the active opposition of the United States would be encountered in case attempts were made to interfere with the internal affairs of any state of the American continents. The position which the United States occupies with respect to the other nations of the continent has been properly termed a supervisory position with respect to the foreign relations of the same. There is hardly any doubt that the government of the United States has never assumed any right, or made attempts, to interfere with the domestic affairs of the countries belonging to the American continent.

XIX.

INTERNATIONAL UNION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

Animated by the desire to assure a complete and effective protection of the industry and commerce of the natives of their respective states and to contribute towards the guaranty of the rights of inventors and to the integrity of commercial transactions, a number of European and Central American nations have formed by a Convention at Paris in March, 1883, a Union for the Protection of Industrial Property. This Union has been joined later by a number of additional nations, the United States of America having become a member of this Union on May 30, 1887. The articles of the Union of Paris of 1883 have been modified by a Convention at Brussels in 1900 and again by another Convention at Washington in 1911.

The principal provision of the Union for the Protection of Industrial Property states that the subjects or citizens of each of the contracting states will enjoy in all of the other states of the Union the advantages which the respective laws allow at any time to the natives

as regards patents of invention, designs, or industrial models, trade-marks and commercial names. This object is furthered by the provision of Art. 4 of the Convention of Paris, prescribing as follows:

Article 4.—Whosoever has in regular form made an application for a patent of invention, or the registration of a design or industrial model, or of a manufacturing or trade mark, in one of the contracting states, will enjoy a right of priority during the delays hereafter determined, for the purpose of making the application or registration in the other states, reserving always the rights of third parties.

Consequently the application subsequently made for a patent, or the said registrations, before the expiration of the delays, herein-after mentioned, can not be invalidated by any facts that have taken place in the interval, say, especially any other application or registration, by the publication of the invention or the working of the same, by the selling of copies of the design or of the model, or of the trade mark.

The delays of priority mentioned above will be twelve months for patents of invention, four months for designs or industrial models and also for manufacturing and trade marks.

Another important provision is that the introduction by the patentee into the country where the patent has been granted of articles manufactured in any of the states of the Union will not involve the forfeiture of the patent.

A common belief that the grant of a patent in any one of the Union countries will assure grant of this patent either automatically or as a matter of right in any one of the other Union countries is erroneous.

The United States of America is not a member of another Union which took its origin in 1891, at Madrid, and which concerns exclusively the registration of industrial and commercial trade marks.

The United States of America also is not a member of a Union formed by a number of countries for the International Protection of Literary Works, Artistic Works, etc., commonly designated as the Copyright Union.

The United States of America, however, is a member of a Union formed by American countries exclusively for the Protection of Trade Marks formed by a Congress at Buenos Aires in August, 1910. While the articles of this Convention of Buenos Aires have been ratified by several governments the offices necessary for carrying out the provisions of this Convention have so far not been established. (B. Singer's Patent and Trade Mark Laws of the World, p. 507-508).

XX.

PASSPORTS.

A passport is the accepted international evidence of nationality. In its usual form, it certifies that the person described in it is a citizen or subject of the country by whose authority it is issued, and requests for him permission to come and go, as well as lawful aid and protection.

Other documents, such as safe-conducts, letters of protection, and special passes for individuals, and even passes for vessels, are often referred to as passports, and not altogether inaccurately, since their object is to secure for the particular person or property freedom of movement and lawful protection. But these documents are used chiefly in war, and are granted on the strength of the personality rather than of the nationality of the individual, being issued, according to the circumstances of the case, even to enemies.

The Attorney-General advised, in 1866, that the Secretary of State was not authorized to furnish the owners of an American merchant vessel with a safe-conduct to the American ministers and naval officers in the East. A special passport or protection paper was, however, issued by Mr. Blaine, in 1890, to an American vessel going on a long and hazardous voyage; and certificates of American character are given to American-owned but foreign-built vessels. Such papers hardly fall within the provisions of the law relating to passports. The terms of the law obviously refer to certificates of nationality issued to individuals.

Passports are only granted to citizens of the United States.

Applicants for passports are required to furnish the State Department with proof of citizenship.

All applications for passports must be accompanied by evidence of citizenship.

1. Authority to Issue.

“The passport provided by this Department is a certificate of citizenship for identification and protection of an American citizen who is about to visit a foreign country. The paper submitted by you is a certificate of citizenship for exactly the same purpose. Aside from the fact that, being to all intents and purposes a passport, it cannot be lawfully issued by you, it is very objectionable in some of its declarations. No person other than a chief officer of this Department can with propriety certify officially that the bearer of the certificate has fully and satisfactorily “complied with the require-

ments established by the Department of State of the United States, to entitle said bearer to a United States passport." (Mr. Bayard, Sec. of State, to Mr. Conoly, Feb. 24, 1886, 159 MS. Dom. Let. 147.)

2. Foreign Countries.

Until the act of 1856 prohibiting a consular officer from issuing a passport in a country where there was a diplomatic agent, except during the latter's absence, passports were granted by consuls as a regular part of their duties; but June 1, 1853, Secretary Marey issued a circular ordering that whenever there was a legation and consulate in the same place, the former only should issue passports.....

From 1856, till the consular regulations now in force went into effect in 1896, a consul-general or, in his absence, a consul had authority to issue passports in colonies; but the regulations of 1896 prohibited, generally, consular officers from issuing passports, unless specifically authorized so to do by the Department (of State), this prohibition not, however, extending to the issuing of passports by a consular officer during the temporary absence from a country of the diplomatic representative. More than forty consular officers now have the specific authority required by the regulations.

The consular fee for issuing a passport is one dollar, payable in coin, and by act of Congress of June 30, 1864, an additional sum of \$5.00 is imposed as an "internal revenue" fee, which, in the opinion of this Department, is payable in the currency of the United States in coterminous British provinces. (Mr. Seward, Sec. of State, to Mr. Fessenden, Sec. of Treas., Jan. 18, 1865, 67 MS. Dom. Let. 575.)

A person who is entitled to receive a passport if temporarily abroad should apply to the diplomatic representative of the United States in the country where he happens to be; or, in the absence of a diplomatic representative, to the consul-general of the United States; or, in the absence of both, to the consul of the United States.

3. Refusal of Passports.

Passports "may be refused even to citizens of the United States, who have so far expatriated themselves as to have become bound in allegiance to other nations, or who in any other manner have forfeited the protection of their own."

The Secretary of State has the right in his discretion to refuse to

issue a passport, and will exercise this right towards anyone who he has reason to believe desires a passport to further an unlawful or improper purpose.

Secs. 4075 and 4076, Rev. Stat., which confer on the Secretary of State authority to issue passports to citizens of the United States, are not in terms mandatory, but authorize the exercise of discretion in the discharge of the function so conferred.

As a general statement, passports are issued to all law-abiding American citizens who apply for them and comply with the rules prescribed; but it is not obligatory to issue one to every citizen who desires it, and the rejection of an application is not to be construed as per se a denial by this Department or its agents of the American citizenship of a person whose application is so rejected. (Mr. Hay, Sec. of State, to dip. & cons. officers, circular, March 27, 1899, For. Rel. 1902, 1.)

XXI.

EXTRADITION.

Extradition is the surrender of persons charged with a crime by one foreign state to another, on its demand pursuant to treaty stipulations between them. In the absence of treaty stipulations fugitives may or may not be surrendered according to the decision arrived at by the respective state in each individual case. While refusal to surrender is sanctioned as a matter of right, in practice on the doctrine of comity criminals are extradited, unless the offense committed is of a political nature, or the punishment according to the laws of the state having jurisdiction over the person, is out of proportion to the act committed.

A good example of extraditable crimes is given by the treaty between the United States and Spain, of 1904. Article II of that treaty provides that persons shall be surrendered who are charged with or convicted of any of the following crimes:

1. Murder, comprehending the crimes designated by the terms of parricide, assassination, manslaughter, when voluntary; poisoning or infanticide.
2. Attempt to commit murder.
3. Rape, abortion, carnal knowledge of children under the age of twelve years.
4. Bigamy.
5. Arson.
6. Wilful and unlawful destruction or obstruction of railroads, which endanger human life.
7. Crimes committed at sea: (a) Piracy, as commonly known and defined

by the laws of nations, or by statute; (b) Wrongfully sinking or destroying a vessel at sea or attempting to do so; (c) Mutiny or conspiracy by two or more members of the crew, or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the Captain or Commander of such vessel, or by fraud or violence taking possession of such vessel; (d) Assault on board ships upon the high seas with intent to do bodily harm. 8. Burglary, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein. 9. The act of breaking into and entering into the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance companies, or other buildings not dwellings with intent to commit a felony therein. 10. Robbery, defined to be the act of feloniously and forcibly taking from the person of another, goods or money by violence or by putting him in fear. 11. Forgery or the utterance of forged papers. 12. The forgery or falsification of the official acts of the Government or public authority, including Courts of Justice, or the uttering or fraudulent use of any of the same. 13. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, created by National, State, Provincial, Territorial, Local or Municipal Governments, bank-notes or other instruments of public credit, counterfeit seals, stamps, dies and marks of State or public administrations, and the utterance, circulation or fraudulent use of the above mentioned objects. 14. Embezzlement or criminal malversation committed within the jurisdiction of one or the other party by public officers or depositaries, where the amount embezzled exceeds two hundred dollars (or Spanish equivalent). 15. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offence is punishable by imprisonment or other corporeal punishment by the laws of both countries, and where the amount embezzled exceeds two hundred dollars (or the Spanish equivalent). Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them or their families, or for any other unlawful end. 17. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more. 18. Obtaining money, valuable securities or other property by false pretences or receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained, where the amount of money or the value of the property so obtained or received exceeds

two hundred dollars (or Spanish equivalent). 19. Perjury or subornation of perjury. 20. Fraud or breach of trust by a bailee, banker, agent, factor trustee, executor, administrator, guardian, director or officer of any Company or Corporation, or by any one in any fiduciary position, where the amount of money or the value of the property misappropriated exceeds two hundred dollars (or Spanish equivalent). 21. Crimes and offences against the laws of both countries for the suppression of slavery and slave trading. 22. The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by imprisonment by the laws of both Contracting Parties.

Article III of the above mentioned treaty stipulates that the provisions of this Convention shall not import claim of extradition for any crime or offence of a political character, nor for acts connected with such crimes or offences, except in so far as they shall constitute ordinary crimes or offences punishable by the laws of the two Countries; and no person surrendered by or to either of the Contracting Parties in virtue of this convention shall be tried or punished for a political crime or offence, except they be ordinary crimes as above stated, nor for any act connected therewith, committed previously to the extradition. An attempt, whether consummated or not, against the life of the Sovereign or of the Head of any State, or against that of any member of his family, when such attempt comprises the act either of murder or assassination or of poisoning, shall not be considered a political offence, or an act connected with such an offence.

XXII.

ASYLUM.

Soon after the establishment of embassies and legations in the fifteenth century, the houses and dwellings of ambassadors became a resort for persons fleeing either from persecution or from violence. The immunity which was allowed to an ambassador's house extended even to his servants. Vattel, who was not only a publicist, but also a diplomatist, in his treatise, published in 1758, while inveighing against a minister's taking advantage of his immunities in order "to afford shelter and protection to the enemies of the prince and to

malefactors of every kind, and thus screen them from the punishments which they have deserved," said:

"I grant, indeed, that when there is question only of certain ordinary transgressions, and these committed by persons who often prove to be rather unfortunate than criminal, or whose punishment is of no great importance to the peace of society, the house of an ambassador may well serve as an asylum for such offenders; and it is better that the sovereign should suffer them to escape, than expose the ambassador to frequent molestation under pretense of a search after them, and thus involve the state in any difficulty which might arise from such proceedings."

De Martens, the eminent German publicist, in 1821, declared that "asylum was still allowed for private crimes, though it was universally admitted that persons accused of crimes of state might be seized, if not given up."

Rome abolished the right of asylum in 1815.

1. Asylum in America.

In the United States, where the supremacy of the local law is rigorously maintained, diplomatic asylum has never existed. In an opinion given as early as 1794 the Attorney-General remarked that the house of a foreign minister could not be made an asylum for a guilty, nor, it was apprehended, a prison for an innocent one; and that, although the minister's house be exempt from the ordinary jurisdiction of the country, yet, in such cases, "recourse would be had to the interposition of the extraordinary powers of the state." But, with the exception of the United States, it is believed that examples of diplomatic asylum may be found in substantially all independent American states. In the countries that were formerly Spanish colonies, the practice may be said to have been inherited; and in some of them it has been so far extended as to include even persons resting under civil and commercial responsibilities.

Bradford, At.-Gen., June 24, 1794, 1 Op. 47-48.

Albertini, *Derecho Diplomatic en sus Aplicaciones a las Republicas Sud-Americanas*, 151-152.

Since the practice of asylum is not sanctioned by international law, it can be defended only on the ground of the consent of the state within whose jurisdiction it is sought to be maintained. This view has been accepted by the Government of the United States in its Instructions to Diplomatic Officers of the United States, which read as follows:

Par. 49. Immunity from local jurisdiction extends to a diplomatic representative's dwelling house and goods and the archives of the mission. These can not be entered, searched, or detained under process of local law or by the local authorities.

Par. 50. The privilege of immunity from local jurisdiction does not embrace the right of asylum for persons outside of a representative's diplomatic or personal household.

Par. 51. In some countries, where frequent insurrections occur and consequent instability of government exists, the practice of extraterritorial asylum has become so firmly established that it is often invoked by unsuccessful insurgents and is practically recognized by the local government, to the extent even of respecting the premises of a consulate in which such fugitives may take refuge. This Government does not sanction the usage, and enjoins upon its representatives in such countries the avoidance of all pretexts for its exercise. While indisposed to direct its representatives to deny temporary shelter to any person whose life may be threatened by mob violence, it deems it proper to instruct them that it will not countenance them in any attempt knowingly to harbor offenders against the laws from the pursuit of the legitimate agents of justice.

2. Asylum in Legations.

In December, 1898, Mr. Bridgman, the minister of the United States at La Paz, drew up a set of rules which were accepted and signed by his Brazilian and French colleagues, in relation to the reception and treatment of refugees seeking asylum at the legations during the insurrection then existing. "The idea in South America is," said Mr. Bridgman, "deeply rooted, among the populace at least, that a foreign legation is legally a refuge for all sorts of criminals, who may remain in safety from lawful or unlawful pursuit." The rules were as follows:

Every person asking asylum must be received first in the outer or waiting room of the legation, and there state his name, official capacity, if any, residence, and reason for demanding refuge; also if his life is threatened by mob violence or is in active danger from any attack.

If, according to the joint rules laid down by the committee composed of the Brazilian, American, and French ministers, he shall be adjudged eligible for protection, he must subscribe to the following rules in writing:

First. To agree that the authorities shall be at once notified of his place of refuge.

Second. To hold no communication with any outside per-

son, and to receive no visitors except by permission of the authority quoted above.

Third. To agree not to leave the legation without permission of the resident minister.

Fourth. To hold himself as virtually the prisoner-guest of the minister in whose legation he is.

Fifth. To agree to peaceably yield himself to the proper authorities when so demanded by them and requested by his host.

Sixth. To quietly depart when so requested by the minister, should the authorities not demand his person after a reasonable time has elapsed.

Edwardo Lisboa.

George H. Bridgman.

C. de Contonly.

La Paz, Bolivia, December 21, 1898.

3. Asylum in Ships of War.

It is generally stated that a ship of war is not subject to the local jurisdiction in a foreign port. This exemption is by some writers maintained to be so absolute as to amount to extraterritoriality.

But, whatever may be said as to the extraterritoriality of ships of war, it is doubtless a universal custom to accord them a general exemption from the local jurisdiction; and for the reason that such an exemption is accorded, it is held that considerations of propriety and good faith require the commanders of such ships to abstain from abusing the hospitality of the port in which they may be by making their vessels an asylum for offenders against the law. The question whether this rule should be applied to slaves has given rise to much discussion. On December 5, 1875, the British admiralty issued to the commanders of Her Majesty's ships of war the following instructions:

Within the territorial waters of a foreign state, you are bound, by the comity of nations, while maintaining the proper exemption of your ship from local jurisdiction, not to allow her to become a shelter for those who would be chargeable with a violation of the law of the place. If, therefore, while your ship is within the territorial waters of a state where slavery exists, a person professing or appearing to be a fugitive slave seeks admission into your ship, you will not admit him, unless his life would be in manifest danger if he were not received on board. Should you, in order to save him from this danger,

receive him, you ought not, after the danger is past, to permit him to continue on board; but you will not entertain any demand for his surrender, or enter into examination as to his status.

One of the results of the case of the Salvadorean refugees was that the Secretary of the Navy, August 15, 1894, substituted for article 287 of the Navy Regulation of 1893 (see art. 288 of Regulations of 1896) the following paragraph:

The right of asylum for political or other refugees has no foundation in international law. In countries, however, where frequent insurrections occur, and constant instability of government exists, local usage sanctions the granting of asylum, but even in the waters of such countries officers should refuse all applications for asylum except when required by the interests of humanity in extreme or exceptional cases, such as the pursuit of a refugee by a mob. Officers must not directly or indirectly invite refugees to accept asylum.

4. Merchant Vessels.

Apart from acts affecting their internal order and discipline and not disturbing the peace of the port, merchant vessels, as a rule, enjoy no exemption from the local jurisdiction. It is therefore generally laid down that they can not grant asylum.

“These principles were recently applied by the Supreme Court of the United States in the case of *Wildenhus*. In that case a murder was committed on board of a Belgian vessel in the port of Jersey City, in the State of New Jersey. The Belgian Government claimed exclusive jurisdiction of the offense under its treaty with the United States. The Supreme Court did not admit this claim, but, holding that the treaty was merely declaratory of the law of nations, said:

‘The principle which governs the whole matter is this: Disorders which disturb only the peace of the ship or those on board are to be dealt with exclusively by the sovereignty of the home of the ship; but those which disturb the public peace may be suppressed, and if need be the offenders punished by the proper authorities of the local jurisdiction. It may not be easy at all times to determine to which of the two jurisdictions a particular act of disorder belongs. Much will undoubtedly depend on the attending circumstances of the particular case, but all must concede the felonious homicide is a subject for the local jurisdiction, and that if the proper authorities are proceeding with the case in a regular way the consul has no right to interfere to prevent it.’ (*Wildenhus’s case*, 120, U. S., 1, 18.)

“Such, then, is the general rule and such are its general limitations. In this relation it may be observed that Calvo states the rule as follows:

‘To sum up, as regards merchant vessels, for all crimes or offenses committed by seamen, either on board or ashore, against foreigners, or in such a way as to disturb public order or to affect the interests of the country in whose waters the vessel is at anchor, as well as for matters in which the parties interested ask of their own accord the aid and support of the local authorities, the police of the country have an absolute right to pursue the guilty party even on board of the vessel to which he belongs, if he has succeeded in taking refuge there, provided in this latter case they come to an understanding with the consul of the nation interested.’ (Calvo, *Le Droit international*, 4th ed., section 471.)”

XXIII.

ARBITRATION.

Where the parties to a controversy agree to submit it to arbitration, it is the usual practice to draw up and sign a treaty, convention, or protocol, defining the question at issue and the arbitrator's powers, besides providing for the appointment of arbitrators and regulating to some extent their procedure. The agreement of two nations to arbitrate a question “constitutes an obligation between them which neither is morally free to disregard on grounds of technical formality.” (Mr. Gresham, Sec. of State, to Mr. Baker. Min. to Costa Rica, July 14, 1893, *For. Rel.* 1893, 202, 203.)

Mediation.

The settlement of disputes by means other than armed conflict was practised even in medieval times, and in modern times the settlement of disputes by mediation, increasing in importance and recognition, bids fair to relegate the employment of armed forces to those rare cases where the intervention of a disinterested power could not be accepted to arrive at an adjustment of the existing differences. Mediation has proven of practical importance in settling disputes whether exercised by a third power at the request of two contending parties, or whether volunteering its good offices and accepted by the parties to the dispute. The mediator is an impartial adviser for both parties and his duty is to resort to all honorable means in adjusting controversies amicably. Recognizing

the importance of mediation and desiring to establish a firm basis therefor the signatory powers at the Hague Convention agreed to the following rules:

“Article II. In case of serious disagreement or conflict, before an appeal of arms, the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

“Article III. Independently of this recourse, the Signatory Powers recommend that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance. Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities. The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

“Article IV. The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

“Article V. The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

“Article VI. Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

“Article VII. The acceptance of mediation can not, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war. If mediation occurs after the commencement of hostilities it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

“Article VIII. The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form: In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations. For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict cease from all direct com-

munication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it. In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

“Article IX. In differences of an international nature, involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the Signatory Powers recommend that the parties, who have not been able to come to an agreement by means of diplomacy, should as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

“Article X. The International Commission of Inquiry are constituted by special agreement between the parties in conflict. The Convention for an inquiry defines the facts to be examined and the full extent of the Commissioners’ powers. It settles the procedure. On the inquiry both sides must be heard. The form and the periods to be observed, if not stated in the inquiry Convention, are decided by the Commission itself.

“Article XI. The International Commission of Inquiry are formed, unless otherwise stipulated, in the manner fixed by Article XXXII of the present convention.

“Article XII. The powers in dispute engage to supply the International Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

“Article XIII. The International Commission of Inquiry communicates its Report to the conflicting Powers, signed by all the members of the Commission.

“Article XIV. The report of the International Commission of Inquiry is limited to a statement of facts, and has in no way the character of an arbitral award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement.” (Convention for the Pacific Settlement of International Disputes, The Hague, July 20, 1899, 32 Stat. II. 1875.)

In accordance with the above humanitarian rules adopted at The Hague Convention, the President of the United States offered his mediation to the warring powers by the following message, for-

warded August 5, 1914, to King George, Emperor William, President Poincaré, Emperor Francis Joseph, and King Albert:

“As official head of one of the powers signatory to The Hague convention, I feel it to be my privilege and my duty under article 3 of that convention to say to you in a spirit of most earnest friendship that I should welcome an opportunity to act in the interest of European peace, either now or any other time that might be thought more suitable, as an occasion to serve you and all concerned in a way that would afford me lasting cause for gratitude and happiness.

WOODROW WILSON.”

The President's message was replied to in a gracious and friendly manner by all belligerents, but his humanitarian offer was declined.

XXIV.

GOOD OFFICES.

Good offices are frequently used by diplomatic and consular representatives in assisting citizens or subjects of a third power when diplomatic relation has been broken off. The best expression we can find on the duties of good offices is the opinion given by the President of the Swiss Confederation, the oldest European republic.

“The president of the Confederation has instructed the undersigned to convey to you his warmest thanks for the readiness with which you have been pleased to comply with our wishes in this matter, and to avail himself, at the same time, of this occasion to express to you the thanks of the federal council for the valuable services which have been rendered since 1871 by your representatives to Swiss citizens. The undersigned assures you that the federal council fully appreciates the good will and the friendly sentiments which have been manifested by the United States Government in this matter.

“With regard to the scope of the protection hereafter to be extended to our citizens by your representatives, I have, however, the honor, in obedience to the instructions of the President of the Confederation, to remark that the views expressed by you on this subject do not appear to accord in all respects with those of the federal council, nor, as we think, with the position taken in relation to this matter by the United States Government in the year 1871.

“In the opinion of the President of the Confederation, proteges

should be treated in all respects as if they were citizens of the protecting country. A Swiss, by placing himself under the protection of the United States, becomes assimilated, in the opinion of the President of the Confederation, while he is under that protection, to a citizen of the United States; his character as a Swiss is for the time being not to be considered, and, so far as the foreign state is concerned, he is covered by the United States flag. Diplomatic protection, if it is to have any real meaning, must not be conditional or limited; it must be more than unofficial mediation in behalf of such claims for indemnity as may arise; otherwise it would be of no avail when most needed—that is to say, at the time when the violated rights of the protegee are to be asserted.

“This view of the scope of the protection to be afforded by no means involves any direct intercourse of the federal council with the diplomatic or consular officers of the protecting state, and there consequently seems to be no ground for the assumption that those officers by protecting Swiss citizens assume the role of officers of the Swiss Confederation. It might rather be assumed that a contrary state of things took place, since a Swiss, who places himself under foreign protection, loses, to a certain extent, the outward characteristics of his nationality.

“The President of the Confederation does not, of course, absolutely decline to accept the view that we can not, by any means, claim the protection of our citizens by the representatives of the United States as a right. He must, however, regard it as his duty to inform himself concerning the nature and scope of the protection of Swiss citizens which has been guaranteed to us.” (Col. Frey, Swiss min., to Mr. Bayard, Sec. of State, Apr. 15, 1887, *For. Rel.* 1887, 1074.)

The answer of the United States Government to this note is expressed in the following terms:

The practice as regards this question in the past appears to be based on a circular addressed to our foreign representative by this Department on the 15th of December, 1871, explanatory of one of June, 1871, as follows:

“You are informed that you are not expected to become a diplomatic or consular officer of the Swiss Republic, which is prohibited by the Constitution to officers of the United States who are citizens. The intention is that you should merely use your good offices in behalf of any Swiss in your vicinity who might request them in the

absence of a diplomatic or consular representative of Switzerland, and with the consent of the authorities where you reside."

This was repeated in a circular issued by Mr. Secretary Evarts, dated the 28th of June, 1877, during the hostilities between Russia and Turkey, as follows:

"You are consequently authorized to continue the exercise of your good offices in behalf of Swiss citizens under the limitations prescribed by my predecessor of June 16 and December 15, 1871."

Another circular, dated March 17, 1882, authorized our diplomatic and consular agents to draw on this Department for any expense incurred in protecting Swiss citizens.

Thus, for instance, the Consul of Guayaquil was instructed to use his good offices in behalf of Swiss citizens who were called on for military service in Ecuador. (Mr. Freylinghuysen, Sec. of State, to Col. Frey. MS. Notes to Switz. I. 59.)

PART II.

XXV.

WAR.

War, its causes and effects are pre-eminent in the subject of international law and have been exhaustively dealt with by writers of note and repute. The terrible effects which are brought about by the prosecution of war with the modern destructive implements have been responsible for the generally accepted view that no sovereign should take resort to an armed conflict in settling disputes of a public or private nature unless the matter at issue is of such serious nature that, for want of a superior authority and the possibility of seeking redress thereby, this constitutes the only mode of obtaining redress. The reasons for making war are distinguished as the right and the expediency to make war, the former constituting the causes and the latter the motives. Again, the causes of war may be distinguished as just and unjust, and similarly the motives are designated as either commendable or vicious. The propriety or absence of propriety in making war, the sufficiency or insufficiency of a cause for making war, are matters foreign to the scope of international law and as such cannot be dealt with. In the present field of investigation war is accepted as a fact and international law is concerned with the establishment of certain rules whereby the precepts of humanity are furthered.

Much confusion may be avoided by bearing in mind the fact that by the term war is meant not the mere employment of force, but the existence of the legal condition of things in which rights are or may be prosecuted by force. Thus, if two nations declare war one against the other, war exists, though no force whatever may as yet have been employed. On the other hand, force may be employed by one nation against another, as in the case of reprisals, and yet no state of war may arise. In such a case there may be said to be an act of war, but no state of war. The distinction is of the first importance, since, from the moment when a state of war supervenes third parties become subject to the performance

of the duties of neutrality as well as to all the inconveniences that result from the exercise of belligerent rights. One of the most remarkable illustrations of the distinction here pointed out was the condition of things in China in 1900, when the armed forces of the allies marched to Peking and occupied parts of the country without any resultant state of war. (Moore Dig., VII., p. 153.)

Cicero says that war is a contest or contention carried on by force. But usage applies the term, not only to an action (a contest), but to a state or condition; and thus we may say, war is the state of persons contending by force, as such. Hence we do not exclude private wars, which preceded public wars, and have the same origin as those. . . . The common use of the word war allows us to include private war, though used generally, it often means specifically public war. We do not say that war is a state of just contention, because precisely the point to be examined is, whether there be just war, and what war is just. (Grotius, Book I., Chap. 1, Art. 2.)

Bynkershoek: "War is a contest between independent parties by way of force or deceit, for the purpose of pursuing their right." (Book I., Chap. 1.)

Vattel: "The state of things in which a nation prosecutes its right by force." (Book III., Chap 1, Art. 1.)

Wheaton: "A contest by force between independent sovereign states."

Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civilized existence that men live in political, continuous societies, forming organized units, called states or nations, whose constituents bear, enjoy, and suffer, advance and retrograde together, in peace and in war. (Instructions for the Government of Armies of the United States in the Field, General Orders, No. 100, April 24, 1863, Art. 20.)

XXVI.

POWER TO DECLARE WAR.

By the Constitution of the United States Congress alone has the power to declare a national or foreign war. It can not declare war against a State, or any number of States, by virtue of any clause in the Constitution. The Constitution confers on the President the whole executive power. He is bound to take care that

the laws be faithfully executed. He is Commander in Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States. He has no power to initiate or declare a war either against a foreign nation or a domestic State. But by the acts of Congress of February 28, 1795, and 3d of March, 1807, he is authorized to call out the militia and use the military and naval forces of the United States in case of invasion by foreign nations, and to suppress insurrection against the government of a State or of the United States.

If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war, although the declaration of it be "unilateral." Lord Stowell (1 Dodson, 247) observes, "It is not the less a war on that account, for war may exist without a declaration on either side. It is so laid down by the best writers on the law of nations. A declaration of war by one country only, is not a mere challenge to be accepted or refused at pleasure by the other." (Grier, J.: *The Prize Cases* [1862], 2 Black, 668.)

XXVII.

DECLARATION OF WAR.

1. The Greeks.

The declaration of war was a condition precedent to the actual beginning of hostilities, as may be ascertained by the various writings of Greek and Roman authors.

In declaring war, the Greeks were wont to send an envoy with instructions to obtain satisfaction, and particularly the writings of Homer point to the fact that after the violation of the right of hospitality by the Trojans the Greeks despatched an envoy who was to obtain satisfaction, or, for want of such satisfaction, to declare war upon the Trojans. The Hellenes recognized a battling of right and wrong in carrying on war, and for this reason a systematic declaration of war was always adhered to, although in some instances this rule was transgressed. To this the tendency is trace-

able to justify war by inquiry at the oracle, from which spoke the old public conscience. Incidentally it may be remarked that state disputes were settled by decisions of arbitrators appointed or agreed upon.

2. The Romans.

The declaration of war pertained to the offices of the *fetiales*, and usually was made after justice had been withheld from the Romans for three and thirty days. The function and importance of the *fetiales* can be best recognized by stating that they could be considered the diplomatic corps of the Roman administration, having also the quality and prerogatives of priests. They were the guardians of the religion and of the people in international relations, defenders of the rights of the people against disturbances of the peace by ambitious plans of war seeking generals, and protectors of the state order against belligerent passions of the multitude.

The method of declaring war consisted in hurling the known symbol of war power of the people (a bloody spear) into the hostile territory and in simultaneously going through religious ceremonies determined to invoke the aid of the gods, who were symbolically appealed to as witnesses to the act. Where obstacles prevented the execution of the formal procedure of declaring war, recourse was taken, in typical Roman spirit, to forcing upon a slave a certain territory which was considered the land of the enemy and which, in a sense, was extraterritorial. Into this land, then, a blood rinsed lance was hurled, and thereby the formal requirements for declaring war, according to the views of the Romans, were completely met.

With the expansion of the national frontiers, however, real difficulties were met with in the execution of the old symbolical procedure. It was a task of the *fetiales* to invent more facile forms which rather approached the modern practice. Thus the more convenient practice was adhered to of hurling a lance from a pillar near the Temple of Bellona toward the hostile state. In addition to this, however, an ambassador was despatched by the military commander of an adjacent province and thereby the enemy informed of the existence of a state of war.

3. The Middle Ages.

The declaration of war observed in the Middle Ages did not greatly vary from the custom observed by the Greeks and Romans. While no religious meaning was attached to the declaration of

war, a herald nevertheless was despatched to the enemy to acquaint them with the declaration of war and warn them of the impending hostilities. Even then the person of the herald was considered sacred and immune from attack, similar to ambassadors or military persons entering into negotiations for obtaining an armistice or truce.

4. Modern Times.

In 1588 the Invincible Armada was sent against England without a declaration of war. Similarly it is well known that during the Thirty Years' War Gustavus Adolphus attacked the German Empire, on a religious ground, without a declaration of war.

Frederick the Great, in 1740, sent a declaration of war against Maria Theresa of Austria, but before the ambassador arrived in Vienna his troops crossed the Silesian frontier and occupied the territory.

The United States began war with England in 1812 by seizing British vessels without previously declaring a state of war.

In the Crimean War of 1854 the British Fleet entered the Black Sea to compel the Russian warships to withdraw to Sebastopol. This act was committed without a formal declaration of war.

In 1870 the French charge d'affaires at Berlin delivered a formal declaration of war to Prussia, the wording of which, in an English version, set forth "that the Government of His Imperial Majesty considers itself from now on in a state of war with Prussia."

Almost identical in wording was the declaration of war handed, in 1877, by the Government of Russia to the Turkish representative in St. Petersburg.

It is universally admitted that a formal declaration is not necessary to constitute a state of war. From this principle, however, an unnecessary and perhaps unwarranted inference is often drawn, namely, that a nation may lawfully or properly begin a war at any time and under any circumstances, with or without notice, in its own absolute discretion. Such a theory would seem to be altogether inadmissible. Although a contest by force between nations may, no matter how it may have been begun, constitute a state of war, it by no means follows that nations, in precipitating such a condition of things, are not bound by any principles of honor or good faith. If, for example, a nation, wishing to absorb another, or to seize a part of its territory, should, without warning or prior controversy, suddenly attack it, a state of war would undoubtedly follow, but it could not be said that the principles of honor and

good faith enjoined by the law of nations had not been violated. In other words, to admit that a state of war exists is by no means to justify the mode by which it was brought about or begun. Nor is the practice of fraud and deceit permitted by a state of war supposed to be admissible in time of peace.

War between the United States and Spain existed on April 21, 1898, when diplomatic relations were broken off, and Spain, in a communication to the United States minister at Madrid, accepted the resolution of Congress for intervention in Cuba as a declaration of war, although the formal decree by Spain, and the declaration of war by Congress, were not made until afterwards. (The Pedro, 175, U. S. 354, 20 S. Ct. 138, affirming decree the Buena Ventura, 87 Fed. Rep. 927.)

The wording of war declarations may be either a concise announcement that a state of war exists between two states or a statement of the *casus belli*.

In the following a few examples of the war declarations which were transmitted between the main powers in the present conflict are offered.

5. Austria-Hungary against Serbia.

July 23, 1914.

"The royal government of Serbia not having replied in a satisfactory manner to the note remitted to it by the Austro-Hungarian minister in Belgrade, July 23, 1914, this imperial and royal government finds itself compelled to proceed itself to safeguard its rights and interests and to have recourse for this purpose to force of arms.

"Austria-Hungary considers itself therefore from this moment in a state of war with Serbia."

The declaration was signed by Count Berchtold, minister of foreign affairs of Austria-Hungary.

6. Germany against Russia.

Aug. 1, 1914.

"Since the beginning of the crisis the imperial government has endeavored to bring about a peaceful solution. In conformity with the wish expressed to him by his majesty the emperor of Russia, his majesty the emperor of Germany, in agreement with England, was endeavoring to act as mediator between the cabinets of Vienna and St. Petersburg, when Russia, without waiting for the results of his efforts, proceeded to mobilize the whole of its land and sea forces.

“As the result of this threatening step, for which no motive was afforded by any military preparation on Germany’s part, the German empire found itself face to face with a serious and imminent danger. If the imperial government had failed to parry this danger it would have compromised the security and even the existence of Germany. Consequently the German government found itself compelled to address the government of his majesty the emperor of all the Russias, and to insist on the cessation of the said military acts. Russia, having refused the satisfaction of this demand, and having shown by this refusal that its action was directed against Germany, I have the honor to inform your excellency, by my government’s command, as follows:

“His majesty the emperor, my august sovereign, raises the gage in the empire’s name and regards himself as in a state of war against Russia.”

The declaration was signed by F. Pourtales, German ambassador at St. Petersburg.

7. Germany against France.

Aug. 3, 1914.

“The German administrative and military authorities have observed a certain number of acts of decided hostility committed on German territory by French military aviators. Several of these last have openly violated the neutrality of Belgium, flying over the territory of this country. One tried to destroy constructions near Wessel; others have been seen in the region of Eifel; another has dropped bombs on the railroad near Carlsruhe and Nuremburg.

“I am charged, and I have the honor to make known to your excellency, that in the face of these aggressions the German empire considers itself in a state of war with France by fault of the latter power.

“At the same time I have the honor to bring to the knowledge of your excellency that the German authorities will detain French merchant ships in German ports, but that they will release them if complete reciprocity is assured within forty-eight hours.

“My diplomatic mission having thus ended, there remains for me only to beg your excellency kindly to supply me with my passports and to take any measures which may be judged useful to assure my return into Germany with the personnel of the embassy

as well as with the personnel of the Bavarian legation and of the general consulate of Germany in Paris.

"Kindly accept, monsieur the president, the expression of my very high consideration."

The notification was addressed to President Poincaré and was signed by Baron von Schoen, German ambassador at Paris.

8. Great Britain against Germany.

Aug. 4, 1914.

"Owing to the summary rejection by the German government of the request made by his Britannic majesty's government that the neutrality of Belgium should be respected, his majesty's ambassador at Berlin has received his passports, and his majesty's government has declared to the German government that a state of war exists between Great Britain and Germany from 11 o'clock p. m., Aug. 4."

9. France against Germany.

Aug. 4, 1914.

The French minister of war issued the following note Aug. 4:

"The German ambassador has demanded his passports and diplomatic relations between France and Germany have been broken off. War is declared."

10. Austria-Hungary against Russia.

Aug. 6, 1914.

"By order of his government the undersigned ambassador of Austria-Hungary has the honor to notify his excellency the minister of foreign affairs of Russia the following:

"Seeing the menacing attitude taken by Russia in the conflict between the Austro-Hungarian monarchy and Servia and in presence of the fact that following this conflict Russia, according to a communication from the cabinet of Berlin, has deemed it advisable to open hostilities against Germany, and that this latter consequently finds herself in a state of war with the said power, Austria-Hungary considers herself equally in a state of war with Russia from the present moment."

The declaration was signed by Count Szapáry, Austro-Hungarian ambassador at St. Petersburg.

11. France and Great Britain against Austria-Hungary.**Aug. 12, 1914.**

Statement issued by British foreign office:

“Diplomatic relations between France and Austria-Hungary being broken off (Aug. 10) the French government requested his majesty’s government to communicate to the Austro-Hungarian ambassador in London the following declaration:

“‘Having declared war on Servia and thus taken the initiative in hostilities in Europe the Austro-Hungarian government has placed itself without any provocation from France in a state of war with France, and after Germany had successively declared war against Russia and France Austria-Hungary has interfered in the conflict by declaring war on Russia, who already was fighting on the side of France.

“‘According to information worthy of belief Austria-Hungary has sent troops over the German frontier in such a manner as to constitute a direct menace against France. In face of these facts the French government finds itself obliged to declare to the Austro-Hungarian government that it will take all measures permitted to it to reply to these acts and menaces.’

“In communicating this declaration, accordingly, to the Austro-Hungarian ambassador in London his Britannic majesty’s government has declared to his excellency that the rupture with France having been brought about in this way it feels itself obliged to announce that a state of war exists between Great Britain and Austria-Hungary as from midnight.”

12. United States against Germany.

(Public Resolution—No. 1—65th Congress.)

(S. J. Res. 1.)

Sixty-fifth Congress of the United States of America;

At the First Session,

Begun and held at the City of Washington on Monday, the second day of April, one thousand nine hundred and seventeen.

Joint Resolution Declaring that a state of war exists between the Imperial German Government and the Government and the people of the United States and making provision to prosecute the same.

Whereas the Imperial German Government has committed re-

peated acts of war against the Government and the people of the United States of America: Therefore be it

RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

CHAMP CLARK,

Speaker of the House of Representatives.

THOMAS R. MARSHALL,

Vice-President of the United States and
President of the Senate.

Approved, April 6, 1917.

WOODROW WILSON.

13. Great Britain against Turkey.

Nov. 5, 1914.

"Owing to hostile acts committed by Turkish forces under German officers, a state of war exists between Great Britain and Turkey from today and all proclamations and orders in council issued with reference to the state of war between Great Britain and Germany and Austria shall apply to the state of war between Great Britain and Turkey."

The proclamation was signed by King George.

14. France against Turkey.

Nov. 5, 1914.

"The hostile acts of the Turkish fleet against a French steamer, causing the death of two Frenchmen and serious damage to the ship, not having been followed by the dismissal of the German naval military missions, the measure whereby Turkey could disclaim responsibility, the government of this republic is obliged to state that as a result of the action of the Ottoman government a state of war exists between France and Turkey."

XXVIII.

COMBATANTS AND NONCOMBATANTS.

The status of combatants and noncombatants is defined in the following article:

57. So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity he is a belligerent; his killing, wounding, or other warlike acts are not individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition when properly organized as soldiers, will not be treated by him as public enemies. (Instructions for the Government of Armies of the United States in the Field, General Orders, No. 100, April 24, 1863.)

It is necessary, in order to place the members of an army under the protection of the law of nations, that it should be commissioned by a state. If war were to be waged by private parties, operating according to the whims of individual leaders, every place that was seized would be sacked and outraged; and war would be the pretence to satiate private greed and spite. Hence, all civilized nations have agreed in the position that war to be a defence to an indictment for homicide or other wrong, must be conducted by a belligerent state, and that it can not avail voluntary combatants not acting under the commission of a belligerent. But free-booters, or detached bodies of volunteers, acting in subordination to a general system, if they wear a distinctive uniform, are to be regarded as soldiers of a belligerent army. Mr. Field, in his proposed code, thus speaks: "The following persons, and no others, are deemed to be impressed with the military character: (1) Those who constitute a part of the military forces of the nation; and (2) those who are connected with the operations thereof, by the express authority of the nation." This was accorded to the partisans of Marion and Sumter in the American Revolution, they being treated as belligerents by Lord Rawdon and Lord Cornwallis, who were in successive command of the British forces in South Carolina; by Napoleon to the German independent volunteers in the later Napoleonic campaigns; and by the Austrians, at the time of the uprising of Italy, to the forces of Garibaldi. (Lawrence's Wheaton's Elem. of Int. Law, 627, pt. iv. chap. ii, Art. 8; Dana's Wheaton, Art. 356; Bluntschli, *Droit. Int. Codifié*, Art. 569, cited by Field.) There must, however, be a military uniform, and this test was insisted on by the Government of the United States in its articles

of war issued in 1863, and by the German Government in its occupation in France in 1871. The same privileges attach to subsidiary forces, camp followers, etc. But ununiformed predatory guerilla bands are regarded as outlaws, and may be punished by a belligerent as robbers and murderers. (Halleck's Int. Law and Laws of War, 386, 387; Heffter, *Droit Int.*, Art. 126; 3 Phillimore's Int. Law, Art. 96; Lieber's Instructions for the Government of Armies of the United States, Art. iv.) But if employed by the nation, they become part of its forces. (Halleck, 386, Art. 8; adopted by Field, etc.; Wharton, *Com. Am. Law*, Art. 221.)

The following articles forming part of the General Orders No. 100, War Department, April 24, 1863, are in point:

The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war. (G. O. 100, Art. 21.)

Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit. (G. O. 100, Art. 22.)

Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of a vigorous war. (G. O. 100, Art. 23.)

The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection, and every disruption of family ties. Protection was, and still is with uncivilized people, the exception. (G. O. 100, Art. 24.)

In modern regular wars of the Europeans and their descendants in other portions of the globe, protection of the inoffensive citizen of the hostile country is the rule; privation and disturbance of private relations are the exceptions. (G. O. 100, Art. 25.)

(See article on Lenient Measures Accorded Noncombatants.)

By the law of war either party to it may receive and list among his troops such as quit the other, unless there has been a previous stipulation that they shall not be received. But when they (such

refugees) have been received, a high moral faith and irrevocable honor, sanctioned by the usages of all nations, gives to them protection personally, and security for all that they have or may possess. They are exempt also from all reproach from the sovereignty to which their services have been rendered. Nothing that they claim as their own can be taken from them, upon the imputation that they had forfeited or meant to relinquish it by the abandonment of their allegiance to the sovereignty which they had left. (Wayne, J., *United States v. Reading*, 18 How. 10.)

XXIX.

ENLISTMENT OF ALIENS.

That the mere intention to become an American citizen, even though it has been declared and the declaration has been recorded in the competent courts, does not amount to a complete naturalization of the declarant, is quite obvious. An alien is neither entitled to exercise the franchise of voting nor is he entitled to be elected to offices which are under the control of the federal government. The declaration of intention does not confer citizenship in the United States. This has been recognized by a large number of decisions of the federal courts and of state courts, as may be ascertained from the following quotations: *Minneapolis v. Reum*, 56 Fed. Rep. 576, 6 C. C. A. 31; *In re Moses*, 83 Fed. Rep. 995; *White v. White*, 2 Met. (Ky.) 185; *Dorsey v. Brigham*, 177 Ill. 250, 52 N. E. 303, 42 L. R. A. 809. See *Settegast v. Schrimpf*, 35 Tex. 323.

In a letter directed by the late Mr. Buchanan, Secretary of State, to the American consul at Havana, July 26, 1848, the Honorable Secretary wrote: "A foreigner who has declared his intention to become an American citizen, without having carried that intention into effect, is not an American citizen."

Another Secretary of State, Mr. Fish, writes concerning the declaration of intention, in a letter dated April 22nd, 1869, and directed to Mr. de Luna, as follows: "The mere declaration of an intention does not make a person born abroad a citizen. He might change his mind before the arrival of the period for him to take the oath of allegiance, and the law of the United States provides for the interval between the declaration of intention and the final act of naturalization, in order that the person who proposes to become naturalized should have leisure to deliberate on the importance of the proceedings."

A similar opinion is expressed in a letter addressed by Mr. Frelinghuysen, Secretary of State, to Mr. Dunne, under date of July 31, 1883, as follows: "A mere declaration of intention to become a citizen of the United States does not change the nationality of the party making such declaration; he remains until final naturalization a subject or citizen of his origin (sic). Consequently such declaration of intention would avail you nothing, for purpose of protection in the country of origin."

The number of similar expressions from the office of the Secretary of State could be enlarged considerably, and actions of the Department of State in refusing passports to aliens who had declared their intention to become citizens of the United States, and in referring these petitioners for passports to the representatives of their own government, also are very numerous. It is not within the space of this work, however, to quote in toto the statements made by the Department of State with respect to the fact that a mere declaration of intention to become an American citizen does not alter the actual allegiance of the declarant, but that, to the contrary, the person declaring his intention remains, until the naturalization is completed, a citizen of that country, or a subject of that government, to whom he owed allegiance at the time of the declaration. As the foregoing proves, in general, the contention of American authorities that a declaration of intention does not alter the citizenship of the declarant, it would only remain to investigate whether an alien can be compelled to military service, no matter whether he has declared his intention or whether he is an alien who did not intend to abandon his citizenship.

That the duty of compulsory military service cannot be imposed on aliens has been the opinion of the Department of State since the very establishment of the government of the United States. In a letter directed on January 5, 1804, by Mr. Madison, Secretary of State, to Mr. Monroe, who was then Minister to England, the Honorable Secretary of State wrote as follows: "Citizens or subjects of one country residing in another, though bound by their temporary allegiance to many common duties, can never be rightfully forced into military service, particularly external service, nor be restrained from leaving their residence when they please. The law of nations protects them against both, and the violation of this law by the avowed impressment of American citizens residing in Great Britain may be pressed with the greater force on the British Government, as it is in direct inconsistency with her

impressment of her own subjects, bound by much stronger ties to the United States, as above explained, as well as with the spirit of her commercial laws and policy, by which foreigners are invited to a residence. The liberation of the persons comprehended by this article, therefore, can not be justly or honorably refused, and the provision for their recompense and their return home is equally due to the service rendered by and the wrong done to them."

This opinion has been consistently followed by the various Secretaries of State who succeeded Mr. Madison. So, for instance, wrote Mr. Monroe, Secretary of State, on July 30, 1813, to Mr. Serurier, Minister of the United States to France, as follows: "In reply to a complaint of the French minister, that a Mr. de Testaret, a French subject, while in Ohio on private business, had been enrolled in the militia and called on to perform military duty in defense of the country, as a citizen of the United States; and that a similar demand had been made on Mr. Dumas, another French subject, in Missouri Territory, Mr. Monroe stated that he would immediately write to the governors of Ohio and Missouri and request their attention to the subject."

In Parliamentary Papers No. 337, 1863, the following statement concerning the contention of the government of the United States is contained: "In 1863 certain able-bodied male persons of foreign birth, who had declared on oath their intention to become American citizens, were called upon for military duty by the United States. On this the British Government, suggested that British subjects who had merely declared their intention to become American citizens, but had not exercised any political franchise in consequence of such declaration, ought to be allowed a reasonable period of leaving the United States or of continuing residing therein with the annexed conditions. The United States Government thereupon allowed sixty-five days to such persons to exercise their opinion, and the British Government refused to interfere in behalf of any intended citizens who had not availed themselves of the opportunity."

In a letter addressed by Mr. Davis, Asst. Secretary of State, to the United States Consul at Demerara, on March 7, 1873, the Secretary of State writes: "There is no treaty stipulation between the United States and Great Britain which exempts the citizens or subjects of either party from military duty in the forces of the other either in peace or war. Consequently we can not claim such ex-

emption in Demerara as a matter of right. As a matter of comity and reciprocity, however, we certainly can claim them. During the late civil war in this country there were numerous instances where British subjects were drafted into the military service of the United States, but were subsequently discharged upon the application of the British minister here. The only cases in which a compliance with such an application was refused were the few in which persons of that nationality had voted in States where foreigners not fully naturalized are allowed that privilege."

In several instances where the right of compulsory military service imposed on aliens has been recognized by the government of the United States, this recognition was only based on the fact that the aliens, owing to their exercise of the franchise of voting on an equal legal footing with born American citizens, had become American citizens in fact, although they had not been admitted to citizenship by a due authorization of law. In a letter addressed by Mr. Bayard, Secretary of State, to Mr. McLane, United States Minister to France, on February 15, 1888, the Secretary of State writes as follows: "In our late civil war, when the Government of the United States was compelled to use every just effort to put down the insurrection by which its existence was assailed, and when in the application of its conscription acts it was compelled to consider many cases of aliens on its shores, there is not a single instance in which an alien was held to military duty when his Government called for his release." As, however, since the enactment of the present naturalization law the franchise of voting is conferred only upon completion of the naturalization, there can be no doubt that the opinion expressed in Parliamentary Papers No. 337, 1863, would be adhered to now by the present incumbent of the office of Secretary of State.

Under the law an alien who desires to become a citizen of the United States must make a declaration under oath, etc. This requirement is applicable to all aliens except those who have been honorably discharged from the military service of the United States (Sec. 2166, Rev. Stat.); but as none can be enlisted in the army who have not made a declaration (Act of August 1, 1894), this exception is now unimportant. It is the policy of the Navy Department, however, not to enlist aliens. To issue even the first paper to alien enemies during the war is not in accordance with the acts of 1798 and 1812.

The Selective Service Regulations of the United States, published

by the office of the Provost Marshal General August 15, 1918, under Section 323, issued a form of affidavit for neutral declarants which provides that "a citizen or a subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen and he shall forever be debarred from becoming a citizen of the United States."

According to Section 117½ of the Selective Service Regulations, the following amendment has been enacted regarding the classification of neutral declarants: "Any uninducted registrant, who is a citizen or subject of a country neutral in the present war, and who has declared his intention to become a citizen of the United States but has not completed his citizenship, shall be relieved from liability to military service upon filing an affidavit with the local board setting forth in such affidavit (Form 1041) that he withdraws his intention to become a citizen of the United States. . . . The involuntary induction of any such registrant shall be stayed by the Local Board until and including the date specified in the notice, and, in the case of any registrant who files the required affidavit, the Local Board shall continue the stay of involuntary induction until such affidavit has been considered in accordance with the provisions of this section and Rule XII (I), section 79, and the registrant has been finally classified by the Local Board and by the District Board if the case is appealed. The date to be specified in each such notice shall be 20 days from the date on which the notice is mailed, exclusive of Sundays, legal holidays, and the day of mailing. After the expiration of the 20-day period (unless the time is extended in the discretion of the Local Board), involuntary induction of any such registrant shall not be further stayed to permit him to make the prescribed affidavit, but the privilege of making such affidavit shall not subsequently be denied such registrant until the arrival of the day of his induction. If and when any such registrant shall make such affidavit after the expiration of the 20-day period, the involuntary induction of such registrant shall be stayed until the affidavit has been considered in accordance with the provisions of this section and Rule XII (I), section 79, and the registrant has been finally classified by the Local Board and by the District Board

if the case is appealed. Any such registrant desiring to be so relieved from liability to military service shall fill out in duplicate P. M. G. O. Form 1041, subscribe and swear (or affirm) thereto before any Federal or State officer duly authorized to administer oaths. He shall file such affidavit in duplicate with the Local Board, at the same time surrendering his duplicate original copy of his declaration of intention to become a citizen of the United States, if it is in his possession. If the registrant has changed his name since his declaration of intention, the affidavit should state the registrant's name as it appeared in his declaration of intention. The Local Board shall thereupon proceed to classify such registrant in accordance with section 79, Rule XII (1). If the registrant is entitled to classification in Class V (1), the Local Board shall make an appropriate notation upon the registrant's Questionnaire and shall mail to the Bureau of Naturalization, Department of Labor, Washington, D. C., one of the copies of P. M. G. O. Form 1014 filed by the registrant and the duplicate original copy of registrant's declaration of intention, if surrendered. The Bureau of Naturalization will, through the proper agencies, take appropriate action to have the declaration of intention canceled and to debar the registrant forever from becoming a citizen of the United States. Note. Before classifying a registrant in Class V (I), Local Boards are especially enjoined to scrutinize carefully the claim of the registrant and to satisfy themselves that the registrant claiming such relief from liability to military service is not a citizen of the United States, and is a citizen or subject of a country neutral in the present war."

XXX.

RECOGNITION OF BELLIGERENCY.

1. Powers or Rights.

The occasion for the accordance of belligerent rights arises when a civil conflict exists within a foreign state. The reason which requires and can alone justify this step by the government of another country is that its own rights and interests are so far affected as to require a definition of its own relations to the parties. Where a parent government is seeking to subdue an insurrection by municipal force, and the insurgents claim a political nationality and belligerent rights which the parent government does not concede,

a recognition by a foreign state of full belligerent rights, if not justified by necessity, is a gratuitous demonstration of moral support to the rebellion and of censure upon the parent government. But the situation of a foreign state with reference to the contest, and the condition of affairs between the contending parties, may be such as to justify this act. It is important, therefore, to determine what state of affairs, and what relations of the foreign state, justify the recognition.

It is certain that the state of things between the parent state and insurgents must amount, in fact, to a war, in the sense of international law—that is, powers and rights of war must be in actual exercise; otherwise the recognition is falsified, for the recognition is of a fact. The tests to determine the question are various, and far more decisive where there is maritime war and commercial relations with foreigners. Among the tests are the existence of a *de facto* political organization of the insurgents sufficient in character, population, and resources to constitute it, if left to itself, a state among the nations, reasonably capable of discharging the duties of a state, the actual employment of military forces on each side, acting in accordance with the rules and customs of war, such as the use of flags of truce, cartels, exchange of prisoners, and the treatment of captured insurgents by the parent state as prisoners of war, and, at sea, employment by the insurgents of commissioned cruisers, and the exercise by the parent government of the rights of blockade of insurgent ports against neutral commerce, and of stopping and searching neutral vessels at sea. If all these elements exist, the condition of things is undoubtedly war, and it may be war before they are all ripened into activity.

2. Foreign States.

As to the relation of the foreign state to the contest, if it is solely on land, and the foreign state is not contiguous, it is difficult to imagine a call for the recognition. If, for instance, the United States should formally recognize belligerent rights in an insurgent community at the center of Europe, with no seaports, it would require a hardly supposable necessity to make it else than a mere demonstration of moral support. But a case may arise where a foreign state must decide whether to hold the parent state responsible for acts done by the insurgents, or to deal with the insurgents as a *de facto* government. (Mr. Canning to Lord Granville on the Greek war, June 22, 1826.)

If the foreign state recognizes belligerency in the insurgents, it releases the parent state from responsibility for whatever may be done by the insurgents, or not done by the parent state where the insurgent power extends. (Mr. Adams to Mr. Seward, June 11, 1861, *Dip. Corr.*, 105.)

In a contest wholly upon land a contiguous state may be obliged to make the decision whether or not to regard it as a war, but, in practice, this has not been done by a general and prospective declaration, but by actual treatment of cases as they arise. Where the insurgents and the parent state are maritime, and the foreign nation has extensive commercial relations and trade at the ports of both, and the foreign nation and either or both of the contending parties have considerable naval force, and the domestic contest must extend itself over the sea, then the relations of the foreign state to the contest are far different.

In such a state of things the liability to political complications, and the questions of right and duty to be decided at once, usually away from home, by private citizens or naval officers, seem to require an authoritative and general decision as to the status of the three parties involved. If the contest is a war, all foreign citizens and officers, whether executive or judicial, are to follow one line of conduct, if it is not a war, they are to follow a totally different line. If it is a war the commissioned cruisers of both sides may stop, search, and capture the foreign merchant vessel, and that vessel must make no resistance and must submit to adjudication by a prize court; if it is not a war, the cruisers of neither party can stop or search the foreign merchant vessel; and that vessel may resist all attempts in that direction, and the ships-of-war of the foreign state may attack and capture any cruiser persisting in the attempt. If it is war, foreign nations must await the adjudication of prize tribunals, if it is not war, no such tribunal can be opened. If it is war, the parent state may institute a blockade *jure gentium* of the insurgent ports, which foreigners must respect; but if it is not a war, foreign nations having large commercial intercourse with the country will not respect a closing of insurgent ports by paper decrees only. If it is a war, the insurgent cruisers are to be treated by foreign citizens and officials, at sea and in port, as lawful belligerents; if it is not a war, those cruisers are pirates, and may be treated as such. If it is a war, the rules and risks respecting carrying contraband, or dispatches, or military persons, come into play; if it is not war, they do not. . . . The recognition of belligerent rights

is not solely to the advantage of the insurgents. They gain the great advantage of a recognized status, and the opportunity to employ commissioned cruisers at sea, and to exert all the powers known to maritime warfare, with the sanction of foreign nations. They can obtain abroad loans, military and naval materials, and enlist men, as against everything but neutrality laws; their flag and commissions are acknowledged, their revenue laws are respected, and they acquire a quasi-political recognition. On the other hand, the parent government is relieved from responsibility for acts done in the insurgent territory, its blockade of its own ports is respected; and it acquires a right to exert against neutral commerce all the powers of a party to a maritime war. (Note of Mr. Dana, *Dana's Wheaton*, Art. 23, p. 34). (See Lawrence, *Principles of Int. Law*, Art. 163).

XXXI.

SUSPENSION OF INTERCOURSE.

Every kind of trading or commercial dealing or intercourse, whether by transmission of money or of goods, or orders for the delivery of either between two countries at war, directly or indirectly, or through the intervention of third persons or partnerships, or by contracts in any form looking to or involving such transmission, is prohibited. (Quoted in *Montgomery v. United States*, 15 Wall 395, from *Kershaw v. Kelsey*, 100 Mass. 561; *United States v. Lapène*, 17 Wall. 601).

The Government of the United States has power to permit limited commercial intercourse with an enemy in time of war, and to impose such conditions thereon as it sees fit; this power is incident to the power to declare war, and to carry it on to a successful termination. And it would seem that the President alone, who is constitutionally invested with the entire charge of hostile operations, may exercise this power; but whether so or not, there is no doubt that, with the concurrent authority of the Congress, he may exercise it according to his discretion. (*Hamilton v. Dillin*, 21 Wall. 73).

In war, all intercourse between the subjects and citizens of the belligerent countries is illegal, unless sanctioned by the authority of the government or in the exercise of the rights of humanity. (*The Julia* (1814), 8 Cranch, 181).

A non-resident alien need not expose himself or his property to the dangers of a foreign war. He may trade with both belligerents or

with either. By so doing he commits no crime. His acts are lawful in the sense that they are not prohibited. So long as he confines his trade to property not hostile or contraband, and violates no blockade, he is secure both in his person and his property. If he is neutral in fact as well as in name, he runs no risk. But so soon as he steps outside of actual neutrality, and adds materially to the warlike strength of one belligerent, he makes himself correspondingly the enemy of the other. To the extent of his acts of hostility and their legitimate consequences, he submits himself to the risk of the war into whose presence he voluntarily comes. If he breaks a blockade or engages in contraband trade, he subjects himself to the chances of the capture and confiscation of his offending property. If he thrusts himself inside the enemies' lines, and for the sake of gain acquired title to hostile property, he must take care that it is not lost to him by the fortune of war. While he may not have committed a crime for which he can be personally punished, his offending property may be treated by the adverse belligerent as an enemy property. He has the legal right to carry, to sell, and to buy; but the conquering belligerent has a corresponding right to capture and condemn. He enters into a race of diligence with his adversary, and takes the chances of success. The rights of the two are in law equal. The one may hold if he can, and the other seize. (*Young v. United States* (1877), 97 U. S. 39, 63).

XXXII.

CONFISCATION.

By the law of nations the debts, credits, and corporal property of an enemy, found in the country on the breaking out of war, are confiscable. (*Cargo of ship Emulous*, 1 Gallison, 562).

The humane maxims of the modern law of nations, which exempt private property of noncombatant enemies from capture as booty of war, found expression in the abandoned and captured property act of March 12, 1863. "No titles were divested in the insurgent States unless in pursuance of a judgment rendered after due legal proceedings. The government recognized to the fullest extent the humane maxims of the modern law of nations, which exempt private property of noncombatant enemies from capture as booty of war." (*Chase, C. J., United States v. Klein*, 13 Wall. 128, 137. See, to same general effect, *Lamar v. Browne*, 92 U. S. 194).

In *Brown v. United States*, 8 Cranch, 110, 122, 123, the court said that it was conceded that war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, and observed that the mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, might more or less affect the exercise of this right, but could not impair the right itself.

All property within enemy territory is in law enemy property, just as all persons in the same territory are enemies. A neutral owning property within the enemy's lines holds it as enemy property, subject to the laws of war; and, if it is hostile property, subject to capture. It has never been doubted that arms and munitions of war, however owned, may be seized by the conquering belligerent upon conquered territory. The reason is that, if left, they may, upon a reverse of the fortunes of war, help to strengthen the adversary. To cripple him, therefore, they may be captured, if necessary; and whether necessary or not, must be determined by the commanding general, unless restrained by the orders of his government, which alone is his superior. The same rule applies to all hostile property. (*Young v. United States* (1877), 97 U. S. 39, 60).

Every nation at war with another is justifiable, by the general and strict law of nations, to seize and confiscate all movable property of its enemy, (of any kind or nature whatsoever), wherever found, whether within its territory or not. (Chace, J., in *Ware v. Hylton* (1796), 3 Dall. 199, 226).

The circumstance that a ship is found in the possession of the enemy affords prima facie evidence that it is his property. But if it was originally of a friendly or neutral character, and has not been changed by a sentence of condemnation, or by such possession as nations recognize as firm and effectual, it will be restored absolutely or conditionally, as such case requires. (*Schooner Adeline*, 9 Cranch, 244).

A vessel and cargo whose papers, supported by the testimony, show that both belonged to a subject of the King of Spain, held lawful prize of war, having been captured by a United States cruiser while on a voyage from one port of the enemy to another. (*The Maria Dolores*, 88 Fed. Rep. 548).

A mail steamship carrying mail of the United States is not for that reason exempt from capture as an enemy vessel. (*The Buena Ventura* (1898), 87 Fed. Rep. 927, affirmed. *The Panama*, 176 U. S. 535).

Property in transit from a belligerent to a neutral is subject to capture and condemnation, if it has not vested at the time of the capture in the neutral consignees.

Neutrals who place their vessels under belligerent control, and engage them in belligerent trade; or permit them to be sent with contraband cargoes, under cover of false destination, to neutral ports, while the real destination is to belligerent ports; impress upon them the character of the belligerent in whose service they are employed, and the vessels may be seized and condemned as enemy property. (Chase, Ch. J., *The Hart*, 3 Wall. 559).

XXXIII.

PUBLIC AND PRIVATE PROPERTY OF THE ENEMY.

A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters for its own benefit or of that of its government all the revenues of real property belonging to the hostile government or nation. The title to such real property remains in abeyance during military occupation, and until the conquest is made complete. (G. O. 100, Art. 31.)

1. Rules Governing the Occupation of Hostile Territory.

The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women; and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished. This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, lands, boats or ships, and churches, for temporary and military uses. (G. O. 100, Art. 37.)

2. Private Property.

Private property, unless forfeited by crimes or by offenses of the owner, can be seized only by way of military necessity, for the support or other benefit of the army or of the United States. If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity. (G. O. 100, Art. 38.)

3. Salaries of Civil Officers.

The salaries of civil officers of the hostile government who remain in the invaded territory, and continue the work of their office, and can continue it according to the circumstances arising out of the war—such as judges, administrative or police officers, officers of city or communal governments—are paid from the public revenue of the invaded territory, until the military government has reason wholly or partially to discontinue it. Salaries or incomes connected with purely honorary titles are always stopped. (G. O. 100, Art. 39.)

4. Municipal Law Suspended.

There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations which is called the law and usages of war on land. All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field. (G. O. 100, Art. 40, 41.)

5. Punishment for Unauthorized Acts.

All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense. A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior. (G. O. 100, Art. 44.)

6. Captures and Booty.

All captures and booty belong, according to the modern law of war, primarily to the government of the captor. Prize money, whether on sea or land, can now only be claimed under local law.

Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate. Offenses to the contrary committed by commissioned officers will be punished with cashiering or such other punishment as the nature of the offense may require; if by soldiers, they shall be punished according to the nature of the offense. (G. O. 100, Art. 45, 46.)

7. Crimes.

Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred. (G. O. 100, Art. 47.)

(Gen. Ord. No. 100, War Dept., Apr. 24, 1863.)

XXXIV.

LICENSES.

Licenses are sometimes granted by a belligerent State to its own citizens, to those of the enemy, or to neutrals, to carry on a trade which is interdicted by the laws of war. Such documents must be respected by the officers and tribunals of the State under whose authority they are issued, though they may be considered by the adverse belligerent as a ground of capture and confiscation. They are to be construed fairly but strictly.

1. General and Special Licenses.

Licenses are general and special. A general license relaxes the exercise of the rights of war, generally or partially, in relation to any community or individuals liable to be affected by their operation. A special license is one given to individuals for a particular voyage for the importation or exportation of particular goods.

Licenses to trade must, as a general rule, emanate from the supreme authority of the State. But there are exceptions to this rule, growing out of the particular circumstances of the war in particular places. Thus, the governor of a province, the general of an army, or the admiral of a fleet, may grant licenses to trade within the limits of their own commands. But such licenses afford no protection beyond the limits of the authority of those who issue them.

2. Object of License.

A license is a kind of safe-conduct, granted by a belligerent state to its own subjects, to those of its enemy, or to neutrals, to carry on a trade which is interdicted by the laws of war, and it operates

as a dispensation from the penalties of those laws, with respect to the state granting it, and so far as its terms can be fairly construed to extend. The officers and tribunals of the state under whose authority they are issued, are bound to respect such documents as lawful relaxations of the ordinary state of war; but the adverse belligerent may justly consider them as per se a ground of capture and confiscation. Licenses are necessarily *stricti juris*, and cannot be carried beyond the evident intention of those by whom they are granted; nevertheless, they are not construed with pedantic accuracy, nor will their fair effect be vitiated by every slight deviation from their terms and conditions. Much, however, will depend upon the nature of the terms which are not complied with. Thus a variation in the quality or character of the goods will often lead to more dangerous consequences than an excess of quantity. Again, a license to trade, though safe in the hands of one person, might become dangerous in those of another, so, also, with respect to the limitations of time and place specified in a license. Such restrictions are often of material importance, and cannot be deviated from with safety. . . . In the United States, as a general rule, licenses are issued under the authority of an act of Congress, but in special cases and for purposes immediately connected with the prosecution of war, they may be granted by the authority of the President, as Commander-in-Chief of the military and naval forces of the United States. (Halleck Int. Law, (4th ed., by Baker), II. 371-373).

XXXV.

PASSPORTS AND SAFE CONDUCTS.

A passport or safe conduct is a document granting persons or property a specified exemption for the time being from the operations of war. The term passport is applied to personal permission given to friends on ordinary occasions, both in peace and war, to go where they wish; while the term safe conduct is usually given to the document authorizing an enemy or an alien to go into places where they would otherwise be in danger or to carry on a trade forbidden by the laws of war. The word passport, however, is more generally applied to persons, and safe conduct to both persons and things. (See Halleck, Int. Law (4th ed., by Baker), II. 358-359).

General Scott, referring to approaching meeting of the new Federal Congress, after his capture of the City of Mexico, says: "I

have seen and given safe conduct through this city to several of its members." He also gave Santa Anna's wife a passport to enable her to follow her husband. (Scott, Autobiography, II. 532, 537).

XXXVI.

CONTRIBUTIONS; REQUISITIONS; TOLLS; TAXES

In accordance with Article 48 of The Hague Convention respecting the Laws and Customs of War on Land of 1899, the military occupant of the occupied territory may levy tolls, taxes and dues, and he shall do so, as far as possible, in accordance with existing rules and the assessment in force, and will in consequence be bound to defray the expenses of the administration of the occupied territory on the same scale as that by which the legitimate Government was bound. The occupant also has the right to make any requisition necessary for the support of his army. Thus, Bonaparte's armies entering Germany, Austria and Italy were supported by contributions and by taxes collected from the respective countries.

1. Rules Governing Levying of Taxes.

Article 51 of the same Convention provides: "No tax shall be collected except under a written order and on the responsibility of the commander-in-chief. This collection shall only take place, as far as possible, in accordance with the rules in existence and the assessment of taxes in force. For every payment a receipt shall be given to the taxpayer."

President Polk (Special Message, Feb. 10, 1848, Richardson's Messages, IV. 571) said: "No principle is better established than that a nation at war has the right of shifting the burden off itself and imposing it on the enemy by exacting military contributions. The mode of making such exactions must be left to the discretion of the conqueror, but it should be exercised in a manner conformable to the rules of civilized warfare. The right to levy these contributions is essential to the successful prosecution of war in an enemy's country, and the practice of nations has been in accordance with this principle. It is as clearly necessary as the right to fight battles, and its exercise is often essential to the subsistence of the army."

During the occupation of Versailles by the Germans in 1870, the French mayor made frequent complaints to the Prussian Command-

ing General that many acts of violence were committed by the German soldiers, such as breaking into private houses and plundering or destroying the furniture, especially the clocks. In the populous part of the town order was tolerably well maintained, but not so in the outskirts. These complaints do not appear to have obtained any favorable results (Delerot, Versailles). . . . Horseshoes were constantly the object of requisitions, and on the great lines of march blacksmiths were everywhere impressed into the Prussian service.

Although, according to Bluntschli, invaders are entitled everywhere to claim from the invaded lodging, food, and drink, fuel, clothing, and carriage, the Prussians did not, as a rule, call upon the enemy to provide clothing for them; a quantity of cloth was requisitioned at Elboeuf, Louviers, and other towns; boots and socks were sometimes requisitioned, and late in the campaign, horses were very frequently demanded. In theory, nothing was taken for which a receipt was not given, but this rule often broke down in practice. An idea got abroad that the Germans would, on the conclusion of peace, redeem the requisition papers. This supposition may have had its origin in the fact that during the invasion of 1792 the requisitions issued by the Duke of Brunswick were in the name of Louis XVI, and not, as during the above war, in that of German generals, or of commanders of detached corps. These officials alone possessed the right to issue requisitions (Edwards, Germans in France).

2. Requisitions Made by Germans in Versailles.

The requisitions, made daily, by the Germans, while in occupation of Versailles, were as follows:—120,000 loaves of bread, 80,000 pounds of meat, 90,000 pounds of oats, 27,000 pounds of rice, 7,000 pounds of roasted coffee, 4,000 pounds of salt, 20,000 litres of wine, and 500,000 cigars. Other requisitions were made as required. In theory none was to be made unless the demand was in writing, but the French complain that verbal requisitions were often made. Further, they say that although every written demand should have borne the vise of the German general commanding the place, the vise was not placed on by him but at his office, by under-officers or soldiers. These granted it to the first comer, and thereby a great disadvantage was caused to the invaded, for every refusal to comply with a requisition became, not a refusal to the bearer, but a refusal to the Commander-in-Chief (Delerot, Versailles). Requisi-

tions were also levied by the French troops on their own countrymen. Edwards (Germans in France) gives an example of this. Five places in the Department of the Orne claimed 11,000 francs for requisitions levied on them by *frances-tireurs* in a regular manner and 16,000 francs for requisitions levied in an "irregular" manner.

3. Conduct of the British in the *Ile de la Passe*.

In a march of twenty-two miles in an enemy's territory in the *Ile de la Passe*, the British, under Captain Willoughby, abstained from pillaging the least article of property. Even the sugar and coffee laid aside for exportation, and usually considered as legitimate objects of seizure, remained untouched; and the invaders, when they quitted the shore for their ship, left behind them not merely a high character for gallantry but also for rigid adherence to promises (James, *Nav. Hist.*, vol. V. 278. Halleck, II. 88.)

XXXVII.

CONTRACTS.

The citizens of one belligerent state are incapable of contracting with the citizens of the other belligerent state.

The effect of war is to dissolve a partnership between citizens of hostile nations. (*The William Bagley*, 5 Wall. 377).

An alien enemy is not permitted to sue. (*Wilcox v. Henry*, 1 Dall. 69; *Matthews v. McStea*, 91 U. S. 7; *Sanderson v. Morgan*, 39 N. Y. 231; *Perkins v. Rogers*, 35 Ind. 124; *Rice v. Shook*, 27 Ark. 137; *Grinnan v. Edwards*, 21 W. Va. 347; *Haymond v. Camden*, 22 W. Va. 180; *Sturn v. Fleming*, 22 W. Va. 404; *Stephens v. Brown*, 24 W. Va. 234).

This rule obviously does not operate as to alien enemies who are by treaty permitted to continue their residence and business, on condition of observing the laws.

The existence of war does not prevent the citizens of one belligerent power from taking proceedings for the protection of their own property, in their own courts, against the citizens of the other, whenever the latter can be reached by process, and where an alien enemy is thus sued, he may defend himself in the action. (*McVeigh v. United States*, 11 Wall. 259; *United States v. Shares of Stock*, 5 Blatchf. 231; *Lee v. Rogers*, 2 Sawyer, 549; *Seymour v. Bailey*, 66 Ill. 288; *Buford v. Speed*, 11 Bush. 338).

The right to sue revives after peace. (*Hanger v. Abbott*, 6 Wall. 532; *Stiles v. Eastley*, 51 Ill. 275. See, also, *Wilcox v. Henry*, 1 Dall. 68).

“The treaty of peace with Great Britain prevents the operation of the statute of limitations of Virginia on British debts which were incurred before the treaty.” (*Hopkirk v. Bell*, 3 Cranch, 454.)

XXXVIII.

INSURRECTION—CIVIL WAR—REBELLION.

A civil war exists and may be prosecuted on the same footing as if those opposing the Government were foreign invaders whenever the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the courts cannot be kept open. Civil war begins by insurrection against the lawful authority of the Government, and is never solemnly declared. When the parties in rebellion occupy and hold in a hostile manner a certain portion of territory, have declared their independence and cast off their allegiance, have organized armies, and commenced hostilities against their former sovereign, the world acknowledges them as belligerents, and the contest a war. (*The Prize Cases*, 2 Black, 635.)

A civil war between the different members of the same society is what Grotius calls a mixed war; it is, according to him, public on the side of the established government, and private on the part of the people resisting its authority. But the general usage of nations regards such a war as entitling both the contending parties to all the rights of war as against each other, and even as respects neutral nations. (Wheaton, Dana's edition, Part IV., Sec. 296, p. 374.)

Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view. (G. O. 100, Art. 149.)

1. Civil War.

Civil war is war between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also some-

times applied to war of rebellion, when the rebellious provinces or portion of the state are contiguous to those containing the seat of government. (G. O. 100, Art. 150.)

2. Rebellion.

The term "rebellion" is applied to an insurrection of large extent, and is usually a war between the legitimate government of a country and portions of provinces of the same who seek to throw off their allegiance to it and set up a government of their own.

When humanity induces the adoption of the rules of regular war toward rebels, whether the adoption is partial or entire, it does in no way whatever imply a partial or complete acknowledgment of their government, if they have set up one, or of them, as an independent and sovereign power. Neutrals have no right to make the adoption of the rules of war by the assailed government toward rebels the ground of their own acknowledgment of the revolted people as an independent power. (G. O. 100, Art. 151, 152.)

3. Treatment of Rebels.

Treating captured rebels as prisoners of war, exchanging them, concluding of cartels, capitulations, or other warlike agreements with them; addressing officers of a rebel army by the rank they may have in the same; accepting flags of truce, or, on the other hand, proclaiming martial law in their territory, or levying war-taxes or forced loans, or doing any other act sanctioned or demanded by the law and usages of public war between sovereign belligerents, neither proves nor establishes an acknowledgment of the rebellious people, or of the government which they may have erected, as a public or sovereign power. Nor does the adoption of the rules of war toward rebels imply an engagement with them extending beyond the limits of these rules. It is victory in the field that ends the strife and settles the future relations between the contending parties.

Treating, in the field, the rebellious enemy according to the law and usages of war has never prevented the legitimate government from trying the leaders of the rebellion or chief rebels for high treason, and from treating them accordingly, unless they are included in a general amnesty.

All enemies in regular war are divided into two general classes—that is to say, into combatants and noncombatants, or unarmed citizens of the hostile government. (G. O. 100, Art. 153, 154, 155.)

4. Loyal and Disloyal Citizens.

The military commander of the legitimate government, in a war of rebellion, distinguishes between the loyal citizen in the revolted portion of the country and the disloyal citizen. The disloyal citizens may further be classified into those citizens known to sympathize with the rebellion without positively aiding it, and those who, without taking up arms, give positive aid and comfort to the rebellious enemy without being bodily forced thereto. (G. O. 100, Art. 155.)

Common justice and plain expediency require that the military commander protect the manifestly loyal citizens, in revolted territories, against the hardships of the war as much as the common misfortune of all war admits. (G. O. 100, Art. 156.)

5. Treatment Accorded to Disloyal Citizens.

The commander will throw the burden of the war, as much as lies within his power, on the disloyal citizens of the revolted portion or province, subjecting them to a stricter policy than the non-combatant enemies have to suffer in regular war, and if he deems it appropriate, or if his government demands of him that every citizen shall, by an oath of allegiance, or by some other manifest act, declare his fidelity to the legitimate government, he may expel, transfer, imprison, or fine the revolted citizens who refuse to pledge themselves anew as citizens obedient to the law and loyal to the government.

Whether it is expedient to do so, and whether reliance can be placed upon such oaths, the commander or his government has the right to decide.

Armed or unarmed resistance by citizens of the United States against the lawful movements of their troops is levying war against the United States and is therefore treason. (G. O. 100, Art. 156, 157.) (Gen. Ord. War Dept. 100, Apr. 24, 1863.)

XXXIX.

SPIES—WAR-TRAITORS.

1. Spies.

Spies, war-traitors, and war-rebels are dealt with in the following manner as set forth in the general orders to the armies:

“A spy is a person who secretly, in disguise or under false pre-

tense, seeks information with the intention of communicating it to the enemy.

“The spy is punishable with death by hanging by the neck, whether or not he succeeded in obtaining the information or in conveying it to the enemy. (G. O. 100, Art. 88.)

“If a citizen of the United States obtains information in a legitimate manner, and betrays it to the enemy, be he a military or civil officer, or a private citizen, he shall suffer death. (G. O. 100, Art. 89.)

2. War-Traitors.

“A traitor under the law of war, or a war-traitor, is a person in a place or district under martial law who, unauthorized by the military commander, gives information of any kind to the enemy, or holds intercourse with him. (G. O. 100, Art. 90.)

“The war-traitor is always severely punished. If his offense consists in betraying to the enemy anything concerning the condition, safety, operations, or plans of the troops holding or occupying the place or district, his punishment is death. (G. O. 100, Art. 91.)

“If the citizen or subject of a country or place invaded or conquered gives information to his own government, from which he is separated by the hostile army, or to the army of his government, he is a war-traitor, and death is the penalty of his offense. (G. O. 100, Art. 92.)

“All unauthorized or secret communication with the enemy is considered treasonable by the law of war.

“Foreign residents in an invaded or occupied territory or foreign visitors in the same can claim no immunity from this law. They may communicate with foreign parts or with the inhabitants of the hostile country, so far as the military authority permits, but no further. Instant expulsion from the occupied territory would be the very least punishment for the infraction of this rule. (G. O. 100, Art. 98.)

“All armies in the field stand in need of guides, and impress them if they can not obtain them otherwise. (G. O. 100, Art. 93.)

“No person having been forced by the enemy to serve as guide is punishable for having done so. (G. O. 100, Art. 94.)

“If a citizen of a hostile and invaded district voluntarily serves as a guide to the enemy, or offers to do so, he is deemed a war-traitor, and shall suffer death. (G. O. 100, Art. 95.)

“A citizen serving voluntarily as a guide against his own country commits treason, and will be dealt with according to the law of his country. (G. O. 100, Art. 96.)

“Guides, when it is clearly proved that they have misled intentionally, may be put to death. (G. O. 100, Art. 97.)

“The law of war, like the criminal law regarding other offenses, makes no difference on account of the difference of sexes, concerning the spy, the war-traitor, or the war-rebel.

“Spies, war-traitors, and war-rebels are not exchanged according to the common law of war. The exchange of such persons would require a special cartel, authorized by the government, or, at a great distance from it, by the chief commander of the army in the field. (See article on cartels).

“A successful spy or war-traitor, safely returned to his own army, and afterwards captured as an enemy, is not subject to punishment for his acts as a spy or war-traitor, but he may be held in closer custody as a person individually dangerous. (G. O. 100, Art. 104.)

“Article 88, defining the term spy and stipulating his punishment, reads as follows: ‘A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy. The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.’ Bluntschli, while embodying this rule in his tentative code, comments (*Droit Int. Condifié*, sec. 628) on it thus: ‘The penalty should not, however, be applied except in the more dangerous cases; it would in most cases be out of all proportion with the crime. The usage has become less barbarous, and it suffices the more frequently to condemn them (spies) to close confinement or other analogous penalties.’ He further says, speaking of the German military regulations of 1870, and apparently on the authority of Rolin Jacquemyns: ‘The menace of death is often not avoidable, but should not however be applied except in cases where the culpability is really grave.’

3. Punishment Commensurate with Danger.

“From these citations it may be inferred Bluntschli holds that the severity of the punishment in each particular case should depend upon the resultant danger, a test which a military tribunal may naturally be presumed to apply to the facts upon which it reaches

a decision. It does not appear practicable to draw a line between the more dangerous and less dangerous cases, and our own Regulations of 1863 do not attempt it." (Mr. Gresham, Sec. of State, to Mr. Denby, min. to China, No. 1033, March 21, 1895, MS. Inst. China, V. 162.)

4. When Not Considered Spies.

"Article XXIX. An individual can only be considered a spy if, acting clandestinely, or on false pretences, he obtains, or seeks to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

"Thus, soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: Soldiers or civilians, carrying out their mission openly, charged with the delivery of despatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches, and generally to maintain communication between the various parts of an army or a territory.

"Article XXX. A spy taken in the act can not be punished without previous trial.

"Article XXXI. A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage." (Convention respecting the Laws and Customs of War on Land, The Hague, July 29, 1899, 32 Stat. II. 1818, 1819.)

5. Deserters.

Deserters from the American Army, having entered the service of the enemy, suffer death if they fall again into the hands of the United States, whether by capture, or being delivered up to the American Army; and if a deserter from the enemy, having taken service in the Army of the United States, is captured by the enemy, and punished by them with death or otherwise, it is not a breach against the law and usages of war, requiring redress or retaliation. (War Dept. Gen. Order No. 100, 1863, Art. 48.)

GUERRILLAS AND GUERRILLA WARFARE.

Whenever an individual or bands of men, without any authority from the state, carry on war against the public enemy, such acts con-

stitute guerrilla warfare. Acting under no authority from the state and acknowledging no superior who would be responsible for their acts, the guerrillas are not treated as soldiers, but as outlaws, and whenever captured do not enjoy the privileges of prisoners of war, but are punished in accordance with the acts committed. The taking of property and the killing of soldiers by guerrillas are respectively treated as robbery and murder and are dealt with accordingly. The absence of authority and distinctive signs of their status no doubt is responsible for the treatment accorded to them after capture, and the hostile attitude which the leading military powers assume toward them.

1. Punishment of Guerrillas.

An early example for the treatment of guerrillas is given in the Thirty Years' War, when Gustavus Adolphus, in return for the acts of South German peasants who mutilated soldiers, burnt their villages and whenever possible executed the perpetrators of these acts. During the French expeditions in Spain, Napoleon emulated the example set by Gustavus Adolphus and dealt sternly and swiftly with any guerrillas who were harassing his outposts or killed sentinels. In the Franco-Prussian war of 1870, the Prussians required each French franc-tireur to wear a uniform or distinctive marks of such uniforms to be recognizable at a reasonable distance. The compliance with these requirements immediately places the guerrillas in the status of soldiers to whom the privileges and immunities as laid down by the laws of civilized warfare must be accorded.

2. Conditions Governing Recognition of Military Status.

The question of recognizing bands of men as part of the military organization of the state has received careful and considerable attention by the leading powers and was finally brought to a solution at the Convention at Brussels in 1874 and ratified at the First Hague Convention in 1899. It is laid down as an established rule that the laws, rights and duties of war do apply not only to armies, but also to militia and volunteer corps provided they meet certain requirements whereby their status may be recognized at a distance. Among the conditions prerequisite to entitle a band of men to be recognized as a military organization are, that they be commanded by a person responsible for the acts of his subordinates.

that they have a fixed definitive emblem recognizable at a distance, that they carry arms openly and that they conduct their operations in accordance with the laws and customs of war.

3. Levies en Masse.

The Hague Convention also settled the question of levies en masse, where the population of a territory which has not been occupied by the enemy spontaneously takes up arms on the enemy's approach to resist the invading troops, without, however, having time to organize themselves in accordance with the conditions stipulated to be recognized as soldiers. It was definitely settled that upon approach of the enemy levies en masse shall be regarded as belligerents provided they carry on their operations in accordance with the laws and customs of war.

4. Guerrillas and Levies en Masse Distinguished.

The distinction which is made between guerrillas and levies en masse is thought to be obvious. The guerrillas are not acting under the authority of the state, and even in case the state should connive at their acts no protection could be accorded to the guerrillas by the state in case they are dealt with in accordance with their status. On the other hand, levies en masse are bodies of men acting under and by virtue of orders received from the public authorities to ward off the danger of the approach of an enemy, and in view of these circumstances, if captured, they are entitled to the prerogatives and benefits of prisoners of war.

XL.

PROHIBITED WAR MEASURES.

1. Prohibited Acts of Belligerents.

According to the Hague Convention the following acts are prohibited:

- (a.) To employ poison or poison weapons;
- (b.) To kill or wound treacherously individuals belonging to the hostile nation or army;
- (c.) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;

(d.) To declare that no quarter will be given;

(e.) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(f.) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

(g.) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

(h.) To declare abolished, suspended, or inadmissible in a Court of Law the rights and actions of the nationals of the hostile party;

(i.) To attack or bombard, by whatever means, towns, villages, dwellings, or buildings which are undefended.

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided that they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

A belligerent is likewise forbidden to compel nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

The officer in command of an attacking force must, before commencing bombardment, except in cases of assault, do all in his power to warn the authorities. The pillage of a town or place, even when taken by assault, is prohibited. (Hague Convention, Articles 23-28.)

2. Prohibition Affecting Aerial Warfare.

The plenipotentiaries at the Peace Conference at The Hague, "duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the declaration of St. Petersburg of the 29th November (11th December), 1868, declare that: The Contracting Powers agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons,

or by other new methods of similar nature. The present Declaration is only binding on the Contracting Powers in case of war between two or more of them. It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power."

3. Prohibition Affecting Land War.

A declaration was adopted by The Hague Conference prohibiting the use of bullets which expand or flatten easily in the human body, as illustrated by certain given details of construction. This, for technical reasons, stated in a separate report, the American delegates did not sign. It was signed by fifteen delegations, as follows: Belgium, Bulgaria, Denmark, France, Greece, Mexico, Montenegro, the Netherlands, Persia, Roumania, Russia, Siam, Spain, Sweden and Norway, and Turkey. (For. Rel. 1899, 513, 520.)

XLI.

PRISONERS OF WAR.

1. Treatment of Prisoners of War.

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated. All their personal belongings, except arms, horses, and military papers, remain their property. They may be interned in a town, fortress, camp, or other place, and bound not to go beyond certain fixed limits; but they cannot be confined except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist. (H. C., Art. 4, 5.)

2. Maintenance and Discipline of Prisoners of War.

The Government into whose hands prisoners of war have fallen is charged with their maintenance. In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging, and clothing on the same footing as the troops of the Government who captured them. They shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary. Escaped prisoners who are retaken before

being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment. Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight. Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed. (H. C., Art. 7, 8, 9.)

3. Right to Services of Prisoners.

The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war. Prisoners may be authorized to work for the public service, for private persons, or on their own account. Work done for the State is paid at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed. When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities. The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance. (H. C., Art. 6.)

4. Parole.

Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honor, scrupulously to fulfil, both towards their own Government and the Government by whom they were made prisoners, the engagements they have contracted. In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given. They cannot be compelled to accept their liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole. If they are liberated on parole and recaptured bearing arms against the Government to whom they had pledged their honour, or against the allies of that Government, they forfeit their right to be treated as prisoners of war, and can be brought before the Courts. (See Art. on Parole.)

5. Status of Non-combatants Attached to Armies.

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying. (H. C., Art. 13.)

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue. (H. C., Art. 15.)

6. Information Agencies for Prisoners of War.

An inquiry office for prisoners of war is instituted on the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. It is the function of this office to reply to all inquiries about the prisoners. It receives from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospitals, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The office must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace. It is likewise the function of the inquiry office to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died

in hospitals or ambulances, and to forward them to those concerned. (H. C., Art. 14.)

Inquiry officers enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through. Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by the State railways. (H. C., Art. 16.)

7. Payment and Liberties Granted to Prisoners of War.

Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount to be ultimately refunded by their own Government. Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever Church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities. The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army. The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible. (H. C., Art. 17, 18, 19, 20; Second Hague Convention, 1907.)

8. Alien.

A subject of a foreign power, acting under a commission from the hostile government, should be treated as an enemy and confined as a prisoner of war. (Lee, At. Gen. 1798, 1 Op. 84.)

9. Reports on Prisoners.

In response to an inquiry prompted by the United States, the British consul at Santiago telegraphed that he had seen Constructor Hobson and the seven seamen of the *Merrimac* in barracks near the town. They were supplied with as good food as the general scarcity permitted. Lieutenant Hobson expressed satisfaction at everything, and he was well lodged. The lodging provided for the seamen was not so good. In case of an attack by land it was quite possible that the prisoners would be exposed, as would be everybody else. (For. Rel. 1898, 981.)

After the outbreak of war between Russia and Japan, the Russian Government, through the French minister at Tokio, requested the Japanese Government to furnish regularly a list of the Russian prisoners of war who might fall into the hands of the Japanese army, and, in case of the death of such prisoners, to inform the French legation or consulates of the fact. The Japanese Government promised to furnish the desired information every ten days, so far as practicable, provided that the Russian Government would give to the United States embassy or consulates in Russia similar information concerning Japanese prisoners. This arrangement was mutually agreed upon. (For. Rel. 1904, 716, 719.)

XLII.

PAROLE.

Prisoners of war may be released from captivity by exchange, and, under certain circumstances, also by parole. The term "Parole" designates the pledge of individual good faith and honor to do, or to omit doing, certain acts after he who gives his parole shall have been dismissed, wholly or partially, from the power of the captor. The parole applies chiefly to prisoners of war whom the captor allows to return to their country, or to live in greater freedom within the captor's country or territory, on conditions stated in the parole. The pledge of the parole is always an individual, but not a private act.

Release of prisoners of war by exchange is the general rule; release by parole is the exception. (G. O. 100, Art. 119-125.)

1. Manner of Giving Paroles.

When paroles are given and received there must be an exchange of two written documents, in which the name and rank of the paroled individuals are accurately and truthfully stated. Commissioned officers only are allowed to give their parole, and they can give it only with the permission of their superior, as long as a superior in rank is within reach. No noncommissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individuals giving them to the punishment of death as deserters. The only admissible exception is where individuals, properly separated from their commands, have suffered long confinement without the possibility of being paroled through an officer. If the govern-

ment does not approve of the parole, the paroled officer must return into captivity, and should the enemy refuse to receive him, he is free of his parole.

No paroling on the battlefield; no paroling of entire bodies of troops after a battle; and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted, or of any value. In capitulations for the surrender of strong places or fortified camps the commanding officer, in cases of urgent necessity, may agree that the troops under his command shall not fight again during the war, unless exchanged. (G. O. 100, Art. 125-129.)

2. Obligation of Parole and Punishment for Transgression.

The usual pledge given in the parole is not to serve during the existing war, unless exchanged. This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war. These cases of breaking the parole are patent acts, and can be visited with the punishment of death; but the pledge does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service for which the paroled officer may be employed. (G. O. 100, Art. 130.)

Breaking the parole is punished with death when the person breaking the parole is captured again. Accurate lists, therefore, of the paroled persons must be kept by the belligerents. (G. O. 100, Art. 124.)

A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy. No prisoner of war can be forced by the hostile government to parole himself, and no government is obliged to parole prisoners of war, or to parole all captured officers, if it paroles any. As the pledging of the parole is an individual act, so is paroling, on the other hand, an act of choice on the part of the belligerent. (G. O. 100, Art. 132, 133.)

XLIII.

GENEVA CONVENTION, 1864.

(Red Cross.)

Amelioration of the Condition of the Wounded in Time of War.
Concluded at General, Switzerland. August 22, 1864; ratifications

exchanged by original signatories June 22, 1865; adhesion declared by the President March 1, 1882; accession advised by the Senate March 16, 1882; adhesion accepted by the Swiss Confederation June 9, 1882; proclaimed July 26, 1882.

(The President's ratification of the act of accession, as transmitted to Berne and exchanged for the ratifications of the other signatory and adhesory powers, embraces the French text of the convention of August 22, 1864, and the additional articles of October 20, 1868. The French text is, therefore, for all international purposes, the standard one. The text printed here is from the proclamation of the President.

The adhesion of the following States has been communicated: Sweden and Norway, December 13, 1864; Greece, January 5-17, 1865; Great Britain, February 18, 1865; Mecklenburg-Schwerin, March 9, 1865; Turkey, July 5, 1865; Württemberg, June 2, 1866; Hesse, June 22, 1866; Bavaria, June 30, 1866; Austria, July 21, 1866; Portugal, August 9, 1866; Saxony, October 25, 1866; Russia, May 10-22, 1867; Persia, December 5, 1874; Roumania, November 18-30, 1874; Salvador, December 30, 1874; Montenegro, November 17-29, 1875; Servia, March 24, 1876; Bolivia, October 16, 1879; Chile, November 15, 1879; Argentine Republic, November 25, 1879; Peru, April 22, 1880; Bulgaria, May 27, 1884; Japan, June 11, 1886; Kongo Free State, January 25, 1889; Venezuela, August 2, 1894; Uruguay, June 20, 1900; Korea, January 8, 1903; Guatemala, April 13, 1903; China, June 29, 1904; Mexico, June 24, 1905; Colombia, June 7, 1906; Brazil, January 26, 1907; Paraguay, Cuba, Dominican Republic, and Haiti: Notice of adhesion given by the Swiss minister at Washington on July 15, 1907; the date of the respective adhesions not given. Panama, notice of adhesion given by Swiss minister at Washington August 5, 1907; Ecuador adhered August 3, 1907.)

1. Ambulances and Hospitals.

Article I. Ambulances and military hospitals shall be acknowledged to be neuter, and, as such, shall be protected and respected by belligerents so long as any sick or wounded may be therein. Such neutrality shall cease if the ambulances or hospitals should be held by a military force.

Art. II. Persons employed in hospitals and ambulances, comprising the staff for superintendence, medical service, administra-

tion, transport of wounded, as well as chaplains, shall participate in the benefit of neutrality, whilst so employed, and so long as there remain any wounded to bring in or to succor.

Art. III. The persons designated in the preceding article may even after occupation by the enemy, continue to fulfill their duties in the hospital or ambulance which they serve, or may withdraw in order to rejoin the corps to which they belong. Under such circumstances, when these persons shall cease from their functions, they shall be delivered by the occupying army to the outposts of the enemy.

Art. IV. As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals can not, in withdrawing, carry away any articles but such as are their private property. Under the same circumstances an ambulance shall, on the contrary, retain its equipment.

Art. V. Inhabitants of the country who may bring help to the wounded shall be respected, and shall remain free. The generals of the belligerent Powers shall make it their care to inform the inhabitants of the appeal addressed to their humanity, and of the neutrality which will be the consequence of it. Any wounded man entertained and taken care of in a house shall be considered as a protection thereto. Any inhabitant who shall have entertained wounded men in his house shall be exempted from the quartering of troops, as well as from a part of the contributions of war which may be imposed.

2. Treatment of Sick Soldiers Irrespective of Nationality.

Art. VI. Wounded or sick soldiers shall be entertained and taken care of, to whatever nation they may belong. Commanders-in-chief shall have the power to deliver immediately to the outposts of the enemy soldiers who have been wounded in an engagement when circumstances permit this to be done, and with the consent of both parties. Those who are recognized, after their wounds are healed, as incapable of serving, shall be sent back to their country. The others may also be sent back, on condition of not again bearing arms during the continuance of the war. Evacuations, together with the persons under whose directions they take place, shall be protected by an absolute neutrality.

3. Emblem.

Art. VII. A distinctive and uniform flag shall be adopted for hospitals, ambulances, and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority. The flag and the arm-badge shall bear a red cross on a white ground.

Art. VIII. The details of execution of the present convention shall be regulated by the commanders-in-chief of belligerent armies, according to the instructions of their respective governments, and in conformity with the general principles laid down in this convention.

Art. IX. The high contracting Powers have agreed to communicate the present convention to those Governments which have not found it convenient to send plenipotentiaries to the International Conference at Geneva, with an invitation to accede thereto. The protocol is for that purpose left open.

Convention for the amelioration of the condition of the wounded in the field, signed at Geneva, Aug. 22, 1864.

4. Articles Concerning Naval Forces.

Art. VI. The boats which, at their own risk and peril, during and after an engagement pick up the shipwrecked or wounded, or which, having picked them up, convey them on board a neutral or hospital ship, shall enjoy, until the accomplishment of their mission, the character of neutrality, so far as the circumstances of the engagement and the position of the ships engaged will permit.

The appreciation of these circumstances is entrusted to the humanity of all the combatants. The wrecked and wounded thus picked up and saved must not serve again during the continuance of the war.

Art. VII. The religious, medical, and hospital staff of any captured vessel are declared neutral, and, on leaving the ship, may remove the articles and surgical instruments which are their private property.

Art. VIII. The staff designated in the preceding article must continue to fulfil their functions in the captured ship, assisting in the removal of the wounded made by the victorious party; they will then be at liberty to return to their country, in conformity with the second paragraph of the first additional article.

The stipulations of the second additional article are applicable to the pay and allowance of the staff.

Art. IX. The military hospital ships remain under martial law in all that concerns their stores; they become the property of the captor, but the latter must not divert them from their special appropriation during the continuance of the war.

(The vessels not equipped for fighting, which, during peace, the government shall have officially declared to be intended to serve as floating hospital ships, shall, however, enjoy during the war complete neutrality, both as regards stores, and also as regards their staff, provided their equipment is exclusively appropriated to the special service on which they are employed).

5. Merchant Vessels.

Art. X. Any merchantman, to whatever nation she may belong, charged exclusively with removal of sick and wounded, is protected by neutrality, but the mere fact, noted on the ship's books, of the vessel having been visited by an enemy's cruiser, renders the sick and wounded incapable of serving during the continuance of the war. The cruiser shall even have the right of putting on board an officer in order to accompany the convoy, and thus verify the good faith of the operation.

If the merchant ship also carries a cargo, her neutrality will still protect it, provided that such cargo is not of a nature to be confiscated by the belligerents.

The belligerents retain the right to interdict neutralized vessels from all communication, and from any course which they may deem prejudicial to the secrecy of their operations. In urgent cases special conventions may be entered into between commanders-in-chief, in order to neutralize temporarily and in a special manner the vessels intended for the removal of the sick and wounded.

Art. XI. Wounded or sick sailors and soldiers, when embarked, to whatever nation they may belong, shall be protected and taken care of by their captors.

Their return to their own country is subject to the provisions of Article VI. of the Convention, and of the additional Article V.

Art. XII. The distinctive flag to be used with the national flag, in order to indicate any vessel or boat which may claim the benefits of neutrality, in virtue of the principles of this Convention, is a white flag with a red cross. The belligerents may exercise in this respect any mode of verification which they may deem necessary.

Military hospital ships shall be distinguished by being painted white outside, with green strake.

6. Hospital Ships.

Art. XIII. The hospital ships which are equipped at the expense of the aid societies, recognized by the governments signing this Convention, and which are furnished with a commission emanating from the sovereign, who shall have given express authority for their being fitted out, and with a certificate from the proper naval authority that they have been placed under his control during their fitting out and on their final departure, and that they were then appropriated solely to the purpose of their mission, shall be considered neutral as well as the whole of their staff. They shall be recognized and protected by the belligerents.

They shall make themselves known by hoisting, together with their national flag, the white flag with a red cross. The distinctive mark of their staff, while performing their duties, shall be an armlet of the same colors. The outer painting of these hospital ships shall be white, with red strake.

These ships shall bear aid and assistance to the wounded and wrecked belligerents, without distinction of nationality.

They must take care not to interfere in any way with the movements of the combatants. During and after the battle they must do their duty at their own risk and peril.

The belligerents shall have the right of controlling and visiting them; they will be at liberty to refuse their assistance, to order them to depart, and to detain them if the exigencies of the case require such a step.

The wounded and wrecked picked up by these ships can not be reclaimed by either of the combatants, and they will be required not to serve during the continuance of the war.

Art. XIV. In naval wars any strong presumption that either belligerent takes advantage of the benefits of neutrality, with any other view than the interest of the sick and wounded, gives to the other belligerent, until proof to the contrary, the right of suspending the Convention as regards such belligerent.

Should this presumption become a certainty, notice may be given to such belligerent that the Convention is suspended with regard to him during the whole continuance of the war. (Geneva Convention.)

XLIV.

CARTEL.

1. Exchange of Prisoners.

It was formerly the practice for the state to leave to each prisoner, at least during the war, the care of redeeming himself, and the captor had a lawful right to demand a ransom for the release of his prisoners. The present usage of civilized nations is, however, to exchange prisoners of war or to release them on their parole or word of honor not to serve against the captor again for a definite period, during the war, or till properly exchanged. An agreement between belligerents for the exchange (and formerly for the ransom) of prisoners of war is called a cartel, and a vessel commissioned for the exchange of prisoners of war or to carry proposals from one belligerent to the other under a flag of truce is sometimes called a cartel ship. (Halleck, *Int. Law* (4th ed. by Baker), II 362). As to the disability of an alien enemy to sue on a ransom bill, see *Anthon vs. Fisher*, 2 Douglas, 649. See, however, *Lawrence's Wheaton* (1863), 695; *I Pistoye et Duverdy*, 280.)

“105. Exchanges of prisoners take place—number for number—rank for rank—wounded for wounded—with added condition for added condition—such, for instance, as not to serve for a certain period.

“106. In exchanging prisoners of war, such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank as may be agreed upon by cartel, which requires the sanction of the government, or of the commander of the army in the field.

“107. A prisoner of war is in honor bound truly to state to the captor his rank; and he is not to assume a lower rank than belongs to him, in order to cause a more advantageous exchange, nor a higher rank, for the purpose of obtaining better treatment.

“Offenses to the contrary have been justly punished by the commanders of released prisoners, and may be good cause for refusing to release such prisoners.

“108. The surplus number of prisoners of war remaining after an exchange has taken place is sometimes released either for the payment of a stipulated sum of money, or, in urgent cases, of provision, clothing, or other necessities.

“Such arrangement, however, requires the sanction of the highest authority.

"109. The exchange of prisoners of war is an act of convenience to both belligerents. If no general cartel has been concluded, it can not be demanded by either of them. No belligerent is obliged to exchange prisoners of war.

"A cartel is voidable as soon as either party has violated it.

"110. No exchange of prisoners shall be made except after complete capture, and after an accurate account of them, and a list of the captured officers, has been taken."

Instructions for the Government of Armies of the United States in the Field, General Orders, No. 100, Apr. 24, 1863, War of the Rebellion, Official Records, series 3, III. 159.

2. Hobson's Heroic Act.

"The next act in the war thrilled not alone the hearts of our countrymen but the world by its exceptional heroism. On the night of June 3d, Lieutenant Hobson, aided by seven devoted volunteers, blocked the narrow outlet from Santiago Harbor by sinking the collier Merrimae in the channel, under a fierce fire from the shore batteries, escaping with their lives as by a miracle, but falling into the hands of the Spaniards. It is a most gratifying incident of the war that the bravery of this little band of heroes was cordially appreciated by the Spanish admiral, who sent a flag of truce to notify Admiral Sampson of their safety and to compliment them on their daring act. They were subsequently exchanged July 7th." (President McKinley, annual message, Dec. 5, 1898, For. Rel. 1898, lix.)

XLV.

DECEIT.

Permissible and Prohibited Acts.

Deceit against an enemy is as a rule permitted; but it is clearly understood that this does not embrace the abuse of signs which are employed in special cases to prevent the exercise of force or to secure immunity from it. "Thus information must not be surreptitiously obtained under the shelter of a flag of truce, and the bearer of a misused flag may be treated by the enemy as a spy; buildings not used as hospitals must not be marked with a hospital flag; and persons not covered by the provisions of the Geneva Con-

vention must not be protected by its cross. A curious arbitrary rule affects one class of stratagems by forbidding certain permitted means of deception from the moment at which they cease to deceive. It is perfectly legitimate to use the distinctive emblems of an enemy in order to escape from him or to draw his forces into action; but it is held that soldiers clothed in the uniforms of their enemy must put on a conspicuous mark by which they can be recognized before attacking, and that a vessel using the enemy's flag must hoist its own flag before firing with shot or shell." (Hall, *Int. Law* 5th ed. 537-539, citing Ortolan, *Liv. III. chap. I.*; Pistoye et Duverdy, *I. 231-234*; Bluntschli, *Art. 565*; *The Peacock*, 4 Rob. 187.)

101. While deception in war is admitted as a just and necessary means of hostility, and is consistent with honorable warfare, the common law of war allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous, and it is so difficult to guard against them. (Instructions for the Government of Armies of the United States in the Field, General Orders, No. 100, April 24, 1863, War of the Rebellion, Official Records, series 3, III. 159.)

Article XXIV. Ruses of war and the employment of methods necessary to obtain information about the enemy and the country, are considered allowable. (Convention respecting the Laws and Customs of War on Land, The Hague, July 29, 1899, 32 Stat. II. 1818.)

XLVI.

SIEGES AND BOMBARDMENTS.

The rules governing sieges and bombardments are laid down in the general orders for the Armies and in several articles adopted by the Hague Convention.

Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity. (G. O. 100, Art. 19.)

It is customary to designate by certain flags (usually yellow) the hospitals in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in bat-

ties when hospitals are situated within the field of the engagement. (G. O. 100, Art. 115.)

Honorable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared.

An honorable belligerent allows himself to be guided by flags or signals of protection as much as the contingencies and the necessities of the fight will permit. (G. O. 100, Art. 116.)

It is justly considered an act of bad faith, of infamy or fiendishness, to deceive the enemy by flags of protection. Such act of bad faith may be good cause for refusing to respect such flags. (G. O. 100, Art. 117.)

The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories, or precious libraries, so that their destruction may be avoided as much as possible. (G. O. 100, Art. 118.)

(Gen. Ord. No. 100, War Dept., Apr. 24, 1863.)

Article XXVII. In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants. (Convention respecting the Laws and Customs of War on Land, The Hague, July 29, 1899, 32 Stat. II. 1818.)

XLVII.

REPRISALS.

Reprisals, says Vattel, are used between nation and nation in order to do themselves justice when they can not otherwise obtain it. If a nation has taken possession of what belongs to another; if it refuses to pay a debt or repair an injury, or to make a just satisfaction, the latter may seize what belongs to the former, and apply it to its own advantage, till it obtains full payment for what is due, together with interest and damages; or keep it as a pledge till the offending nation has made ample satisfaction. The effects thus seized are preserved, while there is any hope of obtaining

satisfaction or justice. As soon as that hope disappears they are confiscated, and then the reprisals are accomplished. If the two nations, upon this ground of quarrel, come to an open rupture, satisfaction is considered as refused from the moment that the war is declared, or hostilities commenced; and then, also, the effects seized may be confiscated. These remarks are more particularly applicable to general reprisals, although, even then, sequestration sometimes immediately follows the seizure. Where such extreme measures are resorted to it is not easy to distinguish between them and actual hostilities. But in special reprisals, made for the indemnification of injuries upon individuals, and limited to particular places and things, immediate confiscation is more frequently resorted to. Thus, Cromwell having made a demand on Cardinal Mazarin, during the minority of Louis XIV. for indemnity to a Quaker, whose vessel had been illegally seized and confiscated on the coast of France, and receiving no reply within the three days specified in the demand, dispatched two ships-of-war to make prize of French vessels in the channel. The vessels were seized and sold, the Quaker paid out of the proceeds the value of his loss, and the French ambassador apprised that the residue was at his service. This substantial act of justice caused neither reclamation nor war.

It was an ancient custom in England, when a merchant had been robbed at sea or despoiled of his property, for the king to issue a commission, under the great seal, to inquire into the robbery, and to punish the offenders, or to give damages in the case of fraud in the mercantile contract. This commission proceeded in conformity with the three laws—i. e., the law of custom of England, the Merchant Law and the Maritime Law.—50 Eliz. 3 par. 2 Dors. 24 de audiend. et terminand. mercatoribus super mare deprædatis.—Pat. 6 E. i. m. 24 Dors., the case of Will. de Dunstaple, a citizen, of Winton. Pat. 32 Eliz. 1 m. 4 pro Willielmo Perin et Domingo Perez mercatoribus.

XLVIII.

RETORSION OR RETALIATION.

Retorsion and reprisal bear about the same relation to arbitration and war, as the personally abating a nuisance does to a suit for its removal. States as well as individuals have a right to protect themselves when injustice is done them by removing the cause of offence; and that in disputes between nations this right is more

largely extended than in disputes between individuals, is to be explained by the fact that in disputes between nations there are not the modes of redress by litigation which exist in suits between individuals. "Retorsion" and "reprisal" are often used convertibly; though the difference is that "retorsion" is retaliation in kind, while "reprisal" is seizing or arresting the goods or trade of subjects of such state as set-off for the injuries received. Under this head fall embargoes, and what are called pacific blockades (*blocus pacifique*), by the former of which trade is forbidden with the offending state; by the latter of which a port belonging to the offending state is closed to foreign trade. These acts approach in character to war, to which they generally lead; yet technically they are not war, and there are cases where the remedy has been applied without war resulting. (Wharton, *Com. Am. Law.* s 206.)

The Chinese Government having persistently refused to pay a claim for personal injuries to a citizen of the United States which it admitted to be due, the United States minister at China was, in 1855, instructed, at his discretion, "to resort to the measure of withholding duties to the amount thereof." (Mr. Marey, Secy. of State, to Mr. Parker, Oct. 5, 1855, *MS. Inst. China*, I., 127.)

"Anticipating that an attempt may possibly be made by the Canadian authorities in the coming season to repeat their unneighborly acts toward our fishermen, I recommend you to confer upon the executive the power to suspend, by proclamation, the operation of the laws authorizing the transit of goods, wares, and merchandise in bond across the territory of the United States to Canada; and further, should such an extreme measure become necessary, to suspend the operation of any laws whereby the vessels of the Dominion of Canada are permitted to enter the waters of the United States." (President Grant, annual message, Dec. 5, 1870, *For. Rel.* 1870, 11.)

XLIX.

DEVASTATION.

The measure of permissible devastation is to be found in the strict necessities of war. The right being thus narrowed, it is easy to distinguish between three groups of cases, in one of which devastation is always permitted, while in a second it is always forbidden, and in a third it is permitted in certain circumstances. To the

first group belong those cases in which destruction is a necessary concomitant of ordinary military action, as when houses are razed or trees cut down to strengthen a defensive position, when the suburbs of a fortified town are demolished to facilitate the attack or defence of the place, or when a village is fired to cover the retreat of an army. Destruction, on the other hand, is always illegitimate when no military end is served, as is the case when churches or public buildings, not militarily used and so situated or marked that they can be distinguished, are subjected to bombardment in common with the houses of a besieged town. Finally, all devastation is permissible when really necessary for the preservation of the force committing it from destruction or surrender; it would even be impossible to deny to an invader the right to cut the dykes of Holland to save himself from such a fate; but when, as in the case supposed, the devastation is extensive in scale and lasting in effect, modern opinion would demand that the necessity should be extreme and patent. (Hall, *Int. Law* (5th ed.) p. 535, citing Manning, ch. v. Heffter, Art. 125; Twiss, *War*, Art. 65; Bluntschli, Art. 663; Calvo, Art. 1919.)

L.

CONQUEST.

Conquest gives only an inchoate right, which does not become perfect till confirmed by the treaty of peace, and by a renunciation or abandonment by the former proprietor. (Opinion of Mr. Jefferson, Sec. of State, to the President, Mar. 18, 1792, *Am. State Papers*, For Rel. I., 252; 7 *Jefferson's Works*, 572.)

The broad and extreme rights of conquest which have often been asserted by writers were in reality qualified by the doctrine of postliminium. Under this doctrine, which is analogous to the *jus postliminii* of the Roman law, where territory occupied by the enemy comes again during the war into the power of the titular sovereign, the legal state of things existing prior to the hostile occupation is re-established. The same doctrine is applied to property susceptible of appropriation, which, after being captured by the enemy, is recaptured before the moment at which it so becomes the property of the captor that third parties can receive from him a transfer of it.

As a general rule, the right of postliminium in the case of occupied territory goes no further than to revive the exercise of rights from the moment at which it comes into operation, so that it does not, as a rule, invalidate acts of the invader which he was competent to perform, such as judicial or administrative acts not of a political complexion, and acts done by private persons under the sanction of municipal law. When an invader exceeds his legal power, as where, supposing himself to have effected a permanent conquest, he assumed to alienate the domains of the state or the landed property of the sovereignty, his acts are null and against a legitimate government.

In the case of captured vessels it is usual to return the captured property to the owner on payment of salvage. (Hall, Int. Law [5th ed.] 486-495.)

LI.

POSTLIMINITY.

The *jus postliminii*, derived from the Roman law, and regulated in modern times by statute or treaty, or by the usage of civilized nations, has been rested by eminent jurists upon the duty of the sovereign to protect his citizens and subjects and their property against warlike or violent acts of the enemy. (Vattel's Law of Nations, lib. 3, c. 14, Art. 204; Halleck's International Law, c. 35, Arts. 1, 2.)

"He is under no such obligation to protect them against unwise bargains, or against sales made for inadequate consideration, or by an agent or custodian in excess of his real authority. The *jus postliminii* attaches to property taken by the enemy with the strong hand against the will of its owner or custodian, and not to property obtained by the enemy by negotiation or purchase." (Oakes v. United States [1899] 174 U. S. 778, 792-793.)

Droit D'Aubaine.

In medieval times the "*Droit d'aubaine*" obtained, according to which property held by foreigners reverted to the state irrespective of whether the property was real or personal and irrespective of whether the deceased died intestate or left a will. This barbarous practice, however, gave way to the more enlightened laws. The practice of levying a tax upon property acquired by succession or devise has also been definitely abolished.

LII.

MILITARY JURISDICTION.**1. Military Jurisdiction Based on Statute and Common Law.**

Military jurisdiction is of two kinds: First, that which is conferred and defined by statute; second, that which is derived from the common law of war. Military offenses under the statute law must be tried in the manner therein directed; but military offenses which do not come within the statute must be tried and punished under the common law of war. The character of the courts which exercise these jurisdictions depends upon the local laws of each particular country. In the armies of the United States the first is exercised by courts-martial, while cases which do not come within the "Rules and Articles of War," or the jurisdiction conferred by statute on courts-martial, are tried by military commissions. (G. O. 100, Art. 13.)

2. Humanitarian Aspects of Law of War.

The law of war does not only disclaim all cruelty and bad faith concerning engagements concluded with the enemy during the war, but also the breaking of stipulations solemnly contracted by the belligerents in time of peace, and avowedly intended to remain in force in case of war between the contracting powers. It disclaims all extortions and other transactions for individual gain; all acts of private revenge, or connivance at such acts. Offenses to the contrary shall be severely punished, and especially so if committed by officers.

3. Scope of Military Necessity.

Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war,

or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God. (G. O. 100, Arts. 11, 15.)

4. Notices of Bombardment.

Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity. When a commander of a besieged place expels the non-combatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender. (G. O. 100, Arts. 18, 19.)

5. Citizens of Hostile Country Considered Enemies.

Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civilized existence that men live in political, continuous societies, forming organized units, called states or nations, whose constituents bear, enjoy, and suffer, advance and retrograde together in peace and in war. The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war. (G. O. 100, Arts. 20, 21.)

6. Lenient Measures Accorded to Noncombatants.

As emphasized in the article on combatants and noncombatants, it is the result of higher civilization to make distinctions especially in a war conducted on land between the private individual of a hostile country and the latter with its men in arms. It is generally acknowledged that the rules of civilized warfare prescribe sparing of personal property and honor of noncombatants in hostile countries, consistent, of course, with the expediences and exigencies of war. It has been relegated to the ranks of barbarism to murder, enslave, or deport to distant parts, private citizens who have given no cause for complaint and have sedulously endeavored to retain their status as non-combatants. In cases where the civil population does not commit any acts of treachery or vandalism and where no interference is estab-

lished by the private citizen in matters affecting the war or the political relations of the country, the inoffensive individual is not disturbed in his private relations and is free to go about his business in unmolested manner, subject, however, to the demands and requirements of the hostile troops whose considerations are preeminent.

7. Temporary Allegiance of Hostile Citizens.

Commanding generals may cause the magistrates and civil officers of the hostile country to take the oath of temporary allegiance or an oath of fidelity to their own victorious government or rulers, and they may expel every one who declines to do so. But whether they do so or not, the people and their civil officers owe strict obedience to them as long as they hold sway over the district or country, at the peril of their lives. The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of the war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage. Retaliation will, therefore, never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and moreover, cautiously and unavoidably: that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution. Unjust or inconsiderate retaliation removes the belligerents farther and farther from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages. (G. O. 100, Arts. 26, 27, 28.)

8. War a Means to an End.

Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defense against wrong; and no conventional restriction of the modes adopted to injure the enemy is any longer admitted; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honor. Modern times are distinguished from earlier ages by the existence, at one and the same time, of many nations and great governments related to one another in close intercourse. Peace is their normal condition; war is the exception. The ultimate object of all modern

war is a renewed state of peace. The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief. (G. O. 100, Arts. 29, 30.)

(War Dept. Gen. Ord. 100, Apr. 24, 1863.)

LIII.

MARTIAL LAW.

A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the Martial Law of the invading or occupying army, whether any proclamation declaring Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its Martial Law. (G. O. 100, Art. 1.)

1. Objects of Martial Law.

Martial Law does not cease during the hostile occupation, except by special proclamation, ordered by the commander in chief, or by special mention in the treaty of peace concluding the war, when the occupation of a place or territory continues beyond the conclusion of peace as one of the conditions of the same. (G. O. 100, Art. 2.)

Martial Law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as the military necessity requires this suspension, substitution, or dictation.

The commander of the forces may proclaim that the administration of all civil and penal law shall continue either wholly or in part, as in times of peace, unless otherwise ordered by the military authority. (G. O. 100, Art. 3.)

2. Scope of Martial Law.

Martial Law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not Martial Law; it is the abuse of the power which that law confers. As Martial Law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity—virtues adorning a soldier even more

than other men, for the very reason that he possesses the power of his arms against the unarmed. (G. O. 100, Art. 4.)

It should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed—even in the commander's own country—when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion.

To save the country is paramount to all other considerations. (G. O. 100, Art. 5.)

All civil and penal law shall continue to take its usual course in the enemy's places and territories under Martial Law.

It extends to property, and to persons, whether they are subjects of the enemy or aliens to that government.

Martial law affects chiefly the police and collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety, and the safety of its operations. (G. O. 100, Arts. 6, 10.)

(War Dept. Gen. Ord. No. 100, Apr. 24, 1863.)

“As to the remark which had been made about him (the Duke of Wellington), he would say a word in explanation. He contended that martial law was neither more nor less than the will of the general who commands the army. In fact, martial law meant no law at all. Therefore the general who declared martial law, and commanded that it should be carried into execution, was bound to lay down distinctly the rules and regulations and limits according to which his will was to be carried out. Now he had, in another country, carried on martial law; that was to say, that he had governed a large proportion of the population of a country by his own will. But then, what did he do? He declared that the country should be governed according to its own national laws, and he carried into execution that will. He governed the country strictly by the laws of the country; and he governed it with such moderation, he must say, that political servants and judges who at first had fled or had been expelled, afterwards consented to act under his direction. The judges sat in the courts of law, conducting their judicial business and administering the law under his direction.”

(Speech of the Duke of Wellington, Debate on Affairs in Ceylon, House of Lords, April 1, 1851, Hansard, 3d Series, CXV. 880.)

LIV.

FLAGS OF TRUCE.

For the purpose of communicating between enemy forces in position, or on the march, or in action, use is made of flags of truce. If the flag proceeds from the enemy's lines during a battle, the ranks which it leaves must halt and cease their fire. When the bearer displays his flag, he will be signaled by the opposing force, either to advance or to retire; if the former, the forces he approaches will cease firing; if the latter, he must instantly retire, since, if he should not, he may be fired upon. (Halleck, *Int. Law* [4th ed., by Baker], II. 369-570, citing Scott, *Military Dictionary*, 304.)

The War Dept. Gen. Ord. No. 100, 1863, deal with this subject as follows:

1. Inviolability of Flag Bearer.

A person is regarded as bearing a flag of truce who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and interpreter who may accompany him. The commander to whom a flag of truce is sent is not in all cases obliged to receive it. He may take all the necessary steps to prevent the envoy taking advantage of his mission to obtain information. In case of abuse, he has the right to detain the envoy temporarily.

2. Hostilities May Be Suspended.

If the bearer of a flag of truce offer himself during an engagement, he can be admitted as a very rare exception only. It is no breach of good faith to retain such flag of truce, if admitted during the engagement. Firing is not required to cease on the appearance of a flag of truce in battle. If the bearer of a flag of truce, presenting himself during an engagement, is killed or wounded, it furnishes no ground of complaint whatever.

3. Abuse of Flags of Truce.

If it be discovered, and fairly proved, that a flag of truce has been abused for surreptitiously obtaining military knowledge, the bearer of the flag thus abusing his sacred character is deemed a spy. So sacred is the character of a flag of truce, and so necessary

is its sacredness, that while its abuse is an especially heinous offense, great caution is requisite, on the other hand, in convicting the bearer of a flag of truce as a spy.

4. Buildings Protected Against Firing.

It is customary to designate by certain flags (usually yellow) the hospitals in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in battles, when hospitals are situated within the field of the engagement. Honorable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared. (G. O. 100, Arts. 115, 116.)

An honorable belligerent allows himself to be guided by flags or signals of protection as much as the contingencies and the necessities of the fight will permit. It is justly considered an act of bad faith, of infamy or fiendishness, to deceive the enemy by flags of protection. Such act of bad faith may be good cause for refusing to respect such flags. (G. O. 100, Arts. 116, 117.)

The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories, or precious libraries so that their destruction may be avoided as much as possible. (G. O. 100, Art. 118.)

A report having been received in Washington, that President Balmaceda, of Chile, had threatened to shoot envoys of the Congressional party if they should be found within his jurisdiction, the American minister at Santiago was instructed by telegraph, May 14, 1891, that, if they should come within such jurisdiction, relying on an offer of mediation or on an invitation of the mediators (of whom the American minister was one), he would "insist that under any circumstances they should have ordinary treatment of flag of truce." (For. Rel. 1891, 123.)

5. Regulations Issued by U. S. Navy Department.

The following were among the regulations issued by the Navy Department of the United States, August 7, 1876, for the government of all persons attached to that service, and are still recognized by that nation:

Chapter XXI. 'Section I.—1. A flag of truce is, in its nature, of a sacred character, and the use of it to obtain knowledge or in-

formation surreptitiously against the interests or wishes of an enemy is to abuse it, and will subject the bearer to punishment as a spy. 2. The senior officer present is alone authorized to despatch, or to admit communication by, a flag of truce: a vessel in a position to discover the approach of such a flag is to communicate the fact promptly. 3. Flags of truce should never be permitted to approach sufficiently near to acquire useful information. The firing of a gun, by the flag or senior officer's ship, is generally understood as a warning not to approach nearer. 4. On the water, a flag of truce should be met at a suitable distance, by a boat or vessel from the senior officer's vessel, in charge of a commissioned officer, having a white flag plainly displayed from the time of leaving until her return. In despatching a flag of truce the same precautions are to be observed. 5. When a flag of truce is admitted, the ensign is always to be hoisted, and a white flag at the fore on board the vessel of the senior officer present, when no engagement is in progress, and kept flying until the flag of truce from the enemy has returned within his lines. 6. A flag of truce cannot insist on being admitted, and should rarely be used, during an engagement; if then admitted, there is no breach of faith in retaining it. Firing is not necessarily to cease on the appearance of a flag of truce during an engagement, and should any person connected with it be killed, no complaint can be made. If, however, the white flag should be exhibited as a token of submission, firing is to cease. 7. An attacking force should avoid firing on hospitals, whenever they are designated by flags or other symbols, understood. It is an act of bad faith, amounting to infamy, to hoist the hospital protective flag over any other building, unless the attacking force should request or consent that it might be used, in order to spare edifices dedicated to science or literature, or containing works of art.

LV.

TRUCE AND ARMISTICE.

If the suspension of hostilities is for a more considerable length of time or for a more general purpose, it is called a truce or armistice. Such suspension is either partial or general. A partial truce is limited to particular places or to particular force, as a suspension of hostilities between a town or fortress and the forces by which it is invested, or between two hostile armies or fleets. But a general

truce or armistice applies to the general operations of war, and whether it be for a longer or shorter time extends to all the forces of the belligerent states and restrains the state of war from producing its proper effects, leaving the contending parties and the question between them in the same situation in which it found them. Such a truce has sometimes been called a temporary peace, though in such case the word peace is used only in opposition to acts of war and not in opposition to a state of war. Such a general suspension of hostilities throughout the nation can be made only by the sovereignty of the state, either directly or by authority especially delegated. (Halleck, *Int. Law* [4th ed., by Baker], II. 346.)

1. Truce and Its Effect.

“A truce, or suspension of arms, does not terminate the war, but it is one of the *commercium belli* which suspends its operations. These conventions rest upon the obligation of good faith, and as they lead to pacific negotiations, and are necessary to control hostilities, and promote the cause of humanity, they are sacredly observed by civilized nations.

“A particular truce is only a partial cessation of hostilities, as between a town and an army besieging it. But a general truce applies to the operations of the war, and if it be for a long or indefinite period of time, it amounts to a temporary peace, which leaves the state of the contending parties, and the questions between them, remaining in the same situation as it found them.” (Abdy’s *Kent*, 377.)

2. Time Limits of Truce.

“The agreement for an armistice should contain a clear announcement of the exact time when it begins and ends. As a rule the terms of these instruments are precise, but in default of definite stipulations on various points we may extract a certain amount of guidance from the general rules of international law. They lay down that as soon as an armistice is concluded it should be notified to all concerned, and add that if no definite time has been fixed for the suspension of hostilities, they cease immediately after the notification.” (Lawrence, *Principles of International Law*, 455.)

“If there is one rule of the law of war more clear and peremptory than another, it is that compacts between enemies, such as truces and capitulations, shall be faithfully adhered to; and their non-

observance is denounced by being manifestly at variance with the true interest and duty, not only of the immediate parties, but of all mankind. (Mr. Webster, Sec. of State, to Mr. Thompson, Apr. 5, 1842, 6 Webster's Works, 438.)

3. Rules Governing a Truce.

"This I shall add by the way, that truces, and such like agreements, do immediately oblige both parties consenting from the time they are concluded; but the subjects on both sides then begin to be bound, when the truce receives the form of law, that is, when it has been solemnly notified, which being done, it immediately begins to have the power to bind the subjects. But that power, if the publication is made only in one place, shall not at that instant extend itself throughout the whole dominion; but upon a convenient time allowed, to give notice in every place. And if any thing in the meantime be done by the subjects contrary to the truce, they shall not be punishable for it. The contracting parties, however, are not the less bound to repair those damages." (Grotius, *De Jure Belli ac Pacis*, Book III., cap. XXI. ss. V.)

In Dana's Wheaton §§402-403, the following rules respecting a truce are described:

"A suspension of hostilities binds the contracting parties, and all acting immediately under their direction, from the time it is concluded, but must be duly promulgated in order to have a force of legal obligation with regard to the other subjects of the belligerent states, so that if, before such notification, they have committed any act of hostility, they are not personally responsible, unless their ignorance be imputable to their own fault or negligence. But as the supreme power of the state is bound to fulfill its own engagements, or those made by its authority, express or implied, the government of the captor is bound, in the case of a suspension of hostilities by sea, to restore all prizes made in contravention of the armistice. To prevent the disputes and difficulties arising from such questions, it is usual to stipulate in the convention of armistice, as in treaties of peace, a prospective period within which hostilities are to cease, with a due regard to the situation and distance of places.

"Besides the general maxims applicable to the interpretation of all international compacts, there are some rules peculiarly applicable to conventions for the suspension of hostilities. The first

of these peculiar rules, as laid down by Vattel, is that each party may do within his own territory, or within the limits prescribed by the armistice, whatever he could do in time of peace. Thus either of the belligerent parties may levy and march troops, collect provisions and other munitions of war, receive re-enforcements from his allies, or repair the fortifications of a place not actually besieged.

“The second rule is, that neither party can take advantage of the truce to execute, without peril to himself, what the continuance of hostilities might have disabled him from doing. Such an act would be a fraudulent violation of the armistice. For example: In the case of a truce between the commander of a fortified town and the army besieging it, neither party is at liberty to continue works, constructed either for attack or defence, or to erect new fortifications for such purposes. Nor can the garrison avail itself of the truce to introduce provisions or succors into the town, through the passages or in any other manner which the besieging army would have been competent to obstruct and prevent, had hostilities not been interrupted by the armistice.

“The third rule stated by Vattel, is rather a corollary from the preceding rules than a distinct principle capable of any separate application. As the truce merely suspends hostilities without terminating the war, all things are to remain in their antecedent state in the places, the possession of which was specially contested at the time of the conclusion of the armistice.

“It is obvious that the contracting parties may, by express compact, derogate in any and every respect from these general conditions.”

Articles 135-147 of the Instructions to Armies in the field, 1863, clearly describe the scope, purpose and rules relating to armistice, truce and capitulation:

“An armistice is binding upon the belligerents from the day of the agreed commencement, but the officers of the armies are responsible from the day only when they receive official information of its existence.

An armistice is the cessation of active hostilities for a period agreed between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties. If an armistice be declared without conditions it extends no further than to require a total cessation of hostilities along the

front of both belligerents. If conditions be agreed upon, they should be clearly expressed, and must be rigidly adhered to by both parties. If either party violates any express condition, the armistice may be declared null and void by the other.

An armistice may be general, and valid for all points and lines of the belligerents; or special—that is, referring to certain troops or certain localities only. An armistice may be concluded for a definite time; or for an indefinite time, during which either belligerent may resume hostilities on giving the notice agreed upon to the other.

4. Conditions Controlling an Armistice.

The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary to a treaty of peace, or to prepare during the armistice for a more vigorous prosecution of the war, does in no way affect the character of the armistice itself.

Commanding officers have the right to conclude armistices binding on the district over which their command extends, but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known to the enemy that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any. If nothing is stipulated the intercourse remains suspended, as during actual hostilities. An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject that the besieger must cease all extension, perfection, or advance of his attacking works as much so as from attacks by main force. But as there is a difference of opinion among martial jurists, whether the besieged have a right to repair breaches or to erect new works of defense within the place during an armistice, this point should be determined by express agreement between the parties.

When an armistice is clearly broken by one of the parties, the other party is released from all obligation to observe it.

Prisoners taken in the act of breaking an armistice must be treated as prisoners of war, the officer alone being responsible who gives the order for such a violation of an armistice. The highest authority of the belligerent aggrieved may demand redress for the infraction of an armistice.

Belligerents sometimes conclude an armistice while their plenipotentiaries are met to discuss the conditions of a treaty of peace, but plenipotentiaries may meet without a preliminary armistice; in the latter case the war is carried on without any abatement.

In order to acquaint the reader with all the laws affecting armistices, truces and in general with the suspension of military operations the articles adopted by the Hague Convention July 29, 1899, are cited:

Article XXXVI. An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Article XXXVII. An armistice may be general or local. The first suspends all military operations of the belligerent States, the second, only those between certain factions of the belligerent armies and in a fixed radius.

Article XXXVIII. An armistice must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.

Article XXXIX. It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the population and with each other.

Article XL. Any serious violation of the armistice by one of the parties gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.

Article XLI. A violation of the terms of the armistice by private individuals acting on their own initiative, only confers the right of indemnity for the losses sustained.

LVI.

SPONSIONS.

Sponsions may be defined as agreements entered into by officers without authority or in excess of authority conferred upon them.

There are certain compacts or conventions relating to the pacific intercourse of belligerent nations which may be concluded, not in virtue of any special authority vested by the State in its agents, but in the exercise of a general implied power incidental to their official stations, such as the official acts of generals, and admirals suspending hostilities within the limits of their respective commands, truces, capitulations, cartels for the exchange of prisoners, special licenses to trade, ransom of captured property, etc. Such compacts do not, in general, require the ratification of the supreme power of the State, unless such ratification be expressly reserved in the act itself. But sometimes compacts or engagements of this kind are made by officers without proper authority, or exceeding the limits of the authority under which they purport to be made: as, for example, a truce for the suspension of arms beyond the limits of the command of the general who makes it.

Sponsions Require Ratification.

Such acts are called sponsions, or treaties *sub spe rati*, and must be confirmed by express or tacit ratification to make them binding. The former is given in positive terms and with the usual forms; the latter is implied, from the fact of acting under the agreement as if bound by its stipulations. Mere silence is not sufficient, though good faith requires that the party who refuses its ratification should notify the other without undue delay; and if, in the meantime, the ratifying party, acting in good faith upon the supposition of the due authority of the agent, should have totally or partially performed his part of the agreement, he is entitled to be indemnified or replaced in his former position.

The convention concluded at Closter-Seven during the Seven Years' War, between the Duke of Cumberland, commander of the British forces in Hanover, and Marshal Richelieu, commanding the French army, for a suspension of arms in the North of Germany, is one of the most remarkable treaties of this kind recorded in modern history. It does not appear, from the discussions which took place between the two Governments on this occasion, that there was any disagreement between them as to the true principles of

international law applicable to such transactions. The conduct, if not the language, of both parties implies a mutual admission that the convention was of a nature to require ratification, as exceeding the ordinary powers of military commanders in respect to mere military capitulations. The same remark may be applied to the convention signed at El Arish, in 1800, for the evacuation of Egypt by the French army; although the position of the two Governments, as to the convention of Closter-Seven, was reversed in that of El Arish, the British Government refusing in the first instance to permit the execution of the latter treaty, upon the ground of the defect in Sir Sidney Smith's powers, and, after the battle of Heliopolis, insisting upon its being performed by the French when circumstances had varied and rendered its execution no longer consistent with their policy and interest. Lawrence (Wheaton, p. 688) says: The capitulation of Closter-Seven, in 1757, which rendered Marshal Richelieu master of the States of the King of England in Germany, and of those of his allies, gave him, moreover, the facility of sending new succours to the Empress Queen and to the Elector of Saxony, as well as of attacking the King of Prussia in the Duchy of Magdeburg. But the King of England, in his quality of Elector of Hanover, refused to ratify the capitulation, which was thus annulled, and the Hanoverians, who had promised no longer to bear arms, resumed them two months afterwards. The motives assigned for the refusal of the capitulations were: 1st. That the army which had capitulated belonged to the Elector, and that it was resuming active service as the army of the King of Great Britain. 2. That the capitulation had been concluded without powers, as well on the part of the Duke of Cumberland as of the Marshal Richelieu. The refusal of the British Admiral, Lord Keith, to recognize the convention of El Arish, already in part executed by France, was based on the orders of his Government, forbidding him to consent to any capitulation with the French army, except on their laying down their arms and becoming prisoners of war, and delivering up their ships in Alexandria. After the rupture of the armistice, which was followed by the battle of Heliopolis and the reconquest of Egypt by Kleber, when the condition of the French army was entirely changed, England offered, in vain, to ratify the convention, which, though actually negotiated by Sir Sidney Smith and containing stipulations on the part of England, essential to the evacuation, was only signed by the plenipotentiaries of Kleber and of the Grand Vizier.

LVII.

SUSPENSION OF ARMS.

Belligerent states and their armies and fleets often have occasion during the continuance of war to enter into agreements of various kinds for the general or partial suspension of hostilities. All such agreements are included under the general name of compacts and conventions. If the cessation of hostilities is only for a very short time, or at a particular place, or for a temporary purpose, such as a parley, a conference, the removal of the wounded, or the burial of the dead, it is called a suspension of arms. Such a compact may be formed between the immediate commanders of the opposing forces, and is obligatory on all persons under their respective commands. Even commanders of detachments may enter into such a compact. But it binds in such a case only the detachment itself, and can not affect the operation of the other troops. (Halleck, *Int. Law* [4th ed., by Baker], II. 346.)

A noted example of the suspension of arms is the capitulation of Cuba.

After a truce to allow of the removal of noncombatants protracted negotiations continued from July 3d until July 15th, when, under menace of immediate assault, the preliminaries of surrender were agreed upon. On the 17th General Shafter occupied the city. The capitulation embraced the entire eastern end of Cuba. The number of Spanish soldiers surrendering was 22,000, all of whom were subsequently conveyed to Spain at the charge of the United States. (President McKinley, *Annual Message*, Dec. 5, 1898, *For. Rel.* 1898, LXI.)

LVIII.

CAPITULATIONS.

Capitulations are agreements entered into by a commanding officer for the surrender of his army, or by the governor of a town, or a fortress, or particular district of country, to surrender it into the hands of the enemy. Capitulations usually contain stipulations with respect to the inhabitants of the place which is surrendered, the security of their religion, property, privileges, and franchises, and also with respect to the troops or garrison, either allowing them to march out with their arms and baggage, with the honors of war, or requiring them to lay down their arms and surrender as

prisoners of war. The general phrase "with all the honors of war," is usually construed to include the right to march, with colors displayed, drums beating, etc. It is proper, however, that such matters should be precisely stated in the articles of capitulation. As an example of courtesy between belligerents, it may be mentioned that in 1802, on Captain Carden, of the British ship "Macedonia," presenting his sword to Commodore Decatur, of the American ship the "United States," that officer declared he could never take the sword of a man who had so nobly defended the honor of it.

1. Authority to Make Capitulations.

The authority to make capitulations falls within the scope of the general powers of the chief commander of the military or naval forces, or of the town, fortress, or district of country included in the capitulation. The power of the general or admiral to enter into an ordinary capitulation, the same as in the case of a truce, is necessarily implied in his office. So of the chief officer of a town, fortress, or district of country. "The governor of a town," says Rutherford, "is the commander of the garrison, that is, of an army employed for the particular purpose of defending the town. The nature, therefore, of his trust implies, that his compacts about surrendering the town will bind himself and the garrison. If he surrenders it when he might have defended it, or upon worse terms than he might have made, he is accountable to his own State for his misconduct; but the abuse of his power does not affect any compact which he makes, in consequence of that power."

2. Limitations of Authority.

But if unusual and extraordinary stipulations are inserted in the capitulation which are not within the ordinary and implied powers of the officer making it, they are not binding either upon the State or upon the troops. For example, if the general should stipulate that his troops shall never bear arms against the same enemy, or, if the governor of a place should agree to cede it to the enemy as a conquest, such agreements, not coming within his implied powers, would be null and void, unless special authority to that effect had been given to him, or his acts should subsequently receive the sanction of his government. (Halleck, *Int. Law*, 4th Ed. by Baker, II. 354-456.)

3. Terms of Surrender.

In April, 1865, General Grant wrote to General Lee that he proposed to receive the surrender of the Army of Northern Virginia

on the following terms, viz.: 1. That rolls of all the officers and men were to be made in duplicate, one copy to be given to an officer of the selection of the former, the other to be retained by whomsoever the latter might appoint. 2. That the officers give their individual paroles not to take arms against the Government of the United States until properly exchanged, and each commander of a company or regiment to sign a like parole for his men. The arms, artillery and public property to be packed and stacked, and turned over to the officers appointed by the former to receive them. That this does not include the side arms of the officers, nor their private horses or baggage. 3. That, this being done, each officer and man shall be allowed to return to his home, and shall not be disturbed by the United States authority so long as they observe their paroles and the laws in force where they reside. General Lee accepted these terms on the same day, and the other rebel armies subsequently surrendered on substantially the same terms.

4. Capitulations Strictly Observed.

Capitulations agreed on between the Contracting Parties must be in accordance with the rules of military honor. When once settled, they must be scrupulously observed by both the parties. A capitulation entered into by a belligerent in regard to the surrender of one of its possessions binds its allies.

LIX.

END OF WAR.

War terminates with the exchange and ratification of the treaty of peace. After peace is conclusively established, accredited ministers are delegated to the governments, consuls are appointed by the respective governments, and thereby both governments fully resume the relations which had been interrupted by the war. Each article of the treaty of peace is carried out, prisoners of war are released and return to their homes, the seizure of properties and all other exigencies are arranged according to the stipulations of the treaty of peace. For instance, the Treaty of Paris of 1898, which is still in force, provides in Article I, that Spain relinquish all claim of sovereignty over and title to Cuba. By Article II, Spain cedes to the United States the island of Porto Rico, and other islands which

then were under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrões. By Article III, Spain cedes to the United States the Philippine Islands, etc. The United States will pay to Spain the sum of twenty million dollars within three months after the exchange of the ratifications of the treaty. Articles V and VI define the evacuation of territory and the mutual exchange of prisoners of war. By Article VII, all claims for indemnity, national or individual, are mutually relinquished. Article IX defines the status of Spanish subjects and natives residing in the territory ceded by Spain, and Article X secures free exercise of their religion. Article XIV concedes to Spain the power to establish consular officers in the ceded territories.

Following the exchange and ratification of this treaty, Spain sent to Washington the Duke of Arcos, as Minister, with Juan Riaño, as secretary (Juan Riaño, the eminent diplomat, is now the Spanish Ambassador in the United States), while the United States appointed Bellamy Storer as diplomatic representative in Spain.

The Treaty of Peace was then followed by a Treaty of Friendship and General Relations, concluded in 1902, Article I of which reads as follows: "There shall be a firm and inviolable peace and sincere friendship between the United States and its citizens on the one part, and His Catholic Majesty and the Spanish Nation on the other part, without exception of persons or places under their respective dominion."

PART III.

LX.

THE TERM "HIGH SEAS."

The term "high seas," as used by legislative bodies, the courts, and text writers, has been construed to express a widely different meaning. As used to define the jurisdiction of admiralty courts, it is held to mean the waters of the ocean exterior to low-water mark. As used in international law, to fix the limits of the open ocean, upon which all people possess common rights, the "great highway of nations," it has been held to mean only so much of the ocean as is exterior to a line running parallel with the shore and some distance therefrom, commonly such distance as can be defended by artillery upon the shore, and therefore a cannon shot or a marine league (three nautical or four statute miles). (Second court of commissioners of Alabama claims, *Stetson, v. United States*, No. 3993, class 1, *Moore, Int., Arbitrations*, IV. 4332, 4335).

LXI.

THE MARGINAL SEA.

"Our jurisdiction has been fixed (at least for the purpose of regulating the conduct of the government in regard to any events arising out of the present European war) to extend three geographical miles (or nearly three and a half English miles) from our shores; with the exception of any waters or bays which are so land-locked as to be unquestionably within the jurisdiction of the United States, be their extent what they may." (Mr. Pickering, Sec. of State, to the Lieut. Governor of Virginia, Sept. 2, 1796, 9 MS. Dom. Let. 281.)

Article II of the Agreement with Great Britain, Adopting With Certain Modifications, The Rules and Method of Procedure Recommended in the Award of September 7, 1910, of the North Atlantic Coast Fisheries Arbitration, states the following: "In case of bays the 3 marine miles are to be measured from a straight line drawn

across the body of water at the place where it ceases to have the configuration and characteristics of a bay. At all other places the 3 marine miles are to be measured following the sinuosities of the coast. And whereas the Tribunal made certain recommendations for the determination of the limits of the bays enumerated in the award; Now, therefore, it is agreed that the recommendations, in so far as the same relate to bays contiguous to the territory of the Dominion of Canada, to which Question V of the Special Agreement is applicable, are hereby adopted, to wit: In every bay not hereinafter specifically provided for, the limits of exclusion shall be drawn three miles seaward from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed ten miles."

The exclusive jurisdiction of a nation extends to the ports, harbors, bays, mouths of rivers, and adjacent parts of sea inclosed by headlands; and, also, to the distance of a marine league, or as far as a cannon-shot will reach from the shore along all its coasts. Within these limits the sovereign of the mainland may arrest, by due process of law, alleged offenders on board of foreign merchant ships. (Mr. Buchanan, Sec. of State, to Mr. Jordan, Jan. 23, 1839, 37 MS. Dom. Let. 98.)

In a series of resolutions adopted by the Institut de Droit International, at Paris, in 1894, it was laid down (art. 5) that all ships without distinction have the right of innocent passage through the territorial sea, subject to the right of belligerents to regulate and for puposes of defense even to bar such passage, and subject also to the right of neutrals to regulate the passage of ships of war of all nationalities. The following resolutions were passed governing the jurisdiction over passing vessels:

"Art. 6. Crimes and offences, committed on foreign ships passing through territorial waters by persons on board such ships against persons or things also on board, are, as such, outside the jurisdiction of the bordering state, unless they involve a violation of the rights or interests of the bordering state or of its inhabitants who are neither members of the crew or passengers. Art. 7. Ships traversing territorial waters must conform to special regulations of the bordering state in the interest or for the security of navigation and maritime police. Art. 8. Ships of all nationalities, by the fact of being in territorial waters, unless only passing through, are subject to the jurisdiction of the bordering state. The bordering state may continue on the high seas a pursuit begun in territorial waters, to arrest

and try a ship which has committed a violation of law within the limits of those waters. In case of capture on the high seas, the fact shall be made known without delay to the state whose flag she bears. The pursuit is interrupted the moment the ship enters the territorial waters of her own or of a third country. The right to pursuit ceases when the vessel enters a port of her own or of a third power. Art. 9. The particular situation of ships of war and of those assimilated to them is reserved." (Institut de Droit International, *Annuaire*, (1894-95), XIII. 329.)

LXII.

NEUTRALIZATION OF CANALS AND WATERWAYS.

Article 26 of the regulations for free navigation of rivers, forming Annex XVI. to the Vienna Congress treaty of June 9, 1815, provides: "If it should happen (which God forbid) that war should break out among any of the States of the Rhine, the collection of the customs shall continue uninterrupted, without any obstacle being thrown in the way by either party. The vessels and persons employed by the customhouse shall enjoy all the rights of neutrality. A guard shall be placed over the offices and chests belonging to the customs." (Hertslet, *Map of Europe by Treaty*, I. 86.)

The act for the navigation of the Danube, made in 1865 by the European commission, and confirmed by the conference of the powers at Paris in the following year declares that the staff, and works of the commission are to enjoy the benefit of neutrality. By Article VII. of the treaty of London of March 13, 1871, it is provided that all the works and establishments created by the commission "shall continue to enjoy the same neutrality which has hitherto protected them." (Holland, *Studies in Int. Law*, 273; Hertslet, *Map of Europe by Treaty*, III. 192.)

In order to increase the guaranties of the free navigation of the Danube, it was provided by Article LII. of the treaty of Berlin of July 13, 1878, that "all the fortresses and fortifications existing on the course of the river from the Iron Gates to its mouth 'should' be razed and no new ones erected." By Articles LIII. and LIV. provision was made for continuing the European commission, which was thenceforth to exercise its functions "as far as Galatz in complete independence of the territorial authorities." (Moore, *Int. Arbitrations*, V., 4853.)

1. Clayton-Bulwer Treaty.

During President Taylor's short administration (1850) the Secretary of State (acting as the Plenipotentiary of the United States) signed a Treaty with Great Britain (commonly known as the Clayton-Bulwer Treaty) in which the United States agreed not to obtain any exclusive control over the ship-canal which it was then supposed would soon be constructed through the territories of Nicaragua; not to erect or maintain any fortifications commanding the same, or in the vicinity thereof; and not to occupy or fortify, or colonize, or assume, or exercise, any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America. An engagement of this nature was a new one in the history of the United States. (Treaties and Convention between the United States and other Powers, p. 1226.)

2. Suez Canal.

November 30, 1854, the Viceroy of Egypt granted to M. Ferdinand de Lesseps a concession for cutting through the Isthmus of Suez a canal fit for ocean navigation. By Article I. of the concession M. de Lesseps undertook to form a company for that purpose, under the name of the Universal Company of the Suez Maritime Canal. By Article VI. it was provided that the rate of passage should be agreed on between the company and the Viceroy of Egypt and collected by the agents of the company, that they should "be always the same for all nations," and that "no special advantage" should ever be given to the exclusive profit of any of them." (Brit. & For. State Pap. 970, 971.)

By a convention of August 6, 1860, between the Egyptian Government and the company, 177,642 shares were assigned to the Viceroy. It is stated that 207,111 shares were taken in France, and a few in Austria and the Netherlands. In 1875, the British Government bought from the Khedive of Egypt 176,602 shares, which were all that then remained in his possession, paying therefor 4,000,000 pounds sterling, less the proportionate value of the 1,040 shares, the difference between 177,642 and 176,602. (Blue Book, Egypt, No. 1, 1876, 7.)

By Article I. of the convention of January 30, 1866, between the Egyptian Government and the company, it was agreed that the Egyptian Government should occupy, within the perimeter of the lands reserved as dependencies of the maritime canal, any strategic position or point which it should deem necessary to the defence of

the country, such occupation not to be made an obstacle to navigation. (56 Brit. & For. State Pap. 274.) This provision is repeated by Article X. of the convention between Egypt and the company, signed at Cairo, February 22, 1866. (56 Brit. & For. State Pap. 277.) By Article XVII. of the same convention all prior acts, concessions, conventions, and statutes not inconsistent therewith were continued in force. The Sultan of Turkey, by a firman of March 19, 1866, confirmed the convention of February 22, 1866. (56 Brit. & For. State Pap. 293.)

3. London Conference of 1885.

In 1885 representatives of the Great Powers, who had met in London to consider the financial condition of Egypt, adopted a declaration in which it was stated that their governments had agreed to appoint a commission of delegates to meet at Paris, March 30, 1885, for the purpose of drawing up a convention guaranteeing at all times and for all powers the freedom of the Suez Canal. (Holland, *Studies in Int. Law*, 287.) The commission met, but separated June 13, without coming to any conclusion. October 21, 1887, Lord Salisbury instructed the British embassy at Paris to lay before the French Government proposals for a convention following in the main the draft which was under discussion in 1885 and presenting on certain points alternative suggestions. Lord Salisbury remarked, however, that no instrument to which Great Britain and France might set their signatures could have any practical value till it had received the "assent of the suzerain and of the other powers concerned." He also stated that it was his duty to renew the words of a reservation made without opposition on any side by Sir Julian Pauncefote at the close of the sittings of the commission of 1885, as follows: "The British delegates, in presenting this draft of a treaty as the definitive regulation intended to guarantee the free use of the Suez Canal, think it their duty to formulate a general reservation as to the application of these provisions, in so far as they may not be compatible with the transitory and exceptional condition of things actually existing in Egypt and may limit the freedom of action of their Government during the period of the occupation of Egypt by the forces of Her Britannic Majesty." (Blue Book, Egypt, No. 1, 1888, 35, 36.)

4. Paris Conference of 1887.

A draft of a convention was signed by representatives of France and Great Britain at Paris, October 24, 1887, subject to the con-

currence of the other powers represented on the commission at Paris in 1885. (Blue Book, Egypt, No. 1, 1888, 45.) This draft was communicated to those powers by the French Government. At the same time Lord Salisbury sent out for communication to the powers two circulars, one of which enclosed a copy of his instructions to the British embassy at Paris of October 21, 1887, containing the reservation made by Sir Julian Pauncefote in 1885. (Blue Book, Egypt, No. 1, 1888, 48. Doc. No. 53.) The draft having received the approval of the powers, it was formally signed at Constantinople, October 29, 1888, the signatory powers being Great Britain, Germany, Austria-Hungary, Spain, France, Italy, the Netherlands, Russia, and Turkey. The ratifications were deposited at Constantinople, October 22, 1888. This convention, after reciting the wish of the powers to establish "a definite system destined to guarantee at all times, and for all the Powers, the free use of the Suez Maritime Canal, and thus to complete the system under which the navigation of this Canal has been placed by the Firman of His Imperial Majesty the Sultan, dated the 22nd February, 1866 (2 Zilkade, 1282), and sanctioning the Concessions of His Highness the Khedive," provides seventeen articles, of which the most important provisions are as follows:

Article I. The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag. Consequently, the High Contracting Parties agree not in any way to interfere with the free use of the Canal, in time of war as in time of peace. The Canal shall never be subjected to the exercise of the right of blockade.

Article II. The High Contracting Parties, recognizing that the Fresh-Water Canal is indispensable to the Maritime Canal, take note of the engagement of His Highness the Khedive towards the Universal Suez Canal Company as regards the Fresh-Water Canal; which engagements are stipulated in a Convention bearing date the 18th March, 1863, containing an expose and four Articles. They undertake not to interfere in any way with the security of that Canal and its branches, the working of which shall not be exposed to any attempt at obstruction.

Article III. The High Contracting Parties likewise undertake to respect the plant, establishments, buildings, and works of the Maritime Canal and of the Fresh-Water Canal.

Article IV. The Maritime Canal remaining open in time of war as a free passage, even to the ships of war of belligerents, according to the terms of Article I. of the present Treaty, the High Contracting Parties agree that no right of war, no act of hostility, nor any act having for its object to obstruct the free navigation of the Canal, shall be committed in the Canal and its ports of access, as well as within a radius of three marine miles from those ports, even though the Ottoman Empire should be one of the belligerent Powers. Vessels of war of belligerents shall not revictual or take in stores in the Canal and its ports of access, except in so far as may be strictly necessary. The transit of the aforesaid vessels through the Canal shall be effected with the least possible delay, in accordance with the Regulations in force, and without any other intermission than that resulting from the necessities of the service. Their stay at Port Said and in the roadstead of Suez shall not exceed twenty-four hours, except in case of distress. In such case they shall be bound to leave as soon as possible. An interval of twenty-four hours shall always elapse between the sailing of a belligerent ship from one of the ports of access and the departure of a ship belonging to the hostile Power.

Article V. In time of war belligerent Powers shall not disembark nor embark within the Canal and its ports of access either troops, munitions, or materials of war. But in case of an accidental hindrance in the Canal, men may be embarked or disembarked at the ports of access by detachments not exceeding 1,000 men, with a corresponding amount of war material.

Article VI. Prizes shall be subjected, in all respects, to the same rules as the vessels of war of belligerents.

Article VII. The Powers shall not keep any vessel of war in the waters of the Canal (including Lake Timsah and the Bitter Lakes). Nevertheless, they may station vessels of war in the ports of access of Port Said and Suez, the number of which shall not exceed two for each Power. This right shall not be exercised by belligerents.

Article VIII. The agents in Egypt of the Signatory Powers of the recent Treaty shall be charged to watch over its execution. . . . They shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the Canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation. (Parl. Pap. Comm. No. 2, 1889, 4.)

5. Corinth Canal.

The Corinth Canal was opened August 24, 1893. It is about six kilometers long. It is wholly within the territory of Greece and forms part of its territorial waters. The rights of property, sovereignty, and jurisdiction all belong to Greece. The canal is not directly connected with the great navigation of the Mediterranean. The Suez Canal is of general interest, the Corinth of secondary interest. It facilitates the relations of the Adriatic with Eastern Greece, the Bosphorus, Asia Minor, and the Black Sea. The Suez Canal unites all Europe, both Central and Western India, the Indian Ocean, the Far East, East Africa, and Australia. (Bonfils, *Manuel de Droit International Public*, 1894, 274.)

6. Kiel Canal.

A maritime canal unites the Bay of Kiel to the mouth of the Elbe. Its construction was due, not to individual initiative, but to the German Empire, the reasons being strategic rather than commercial. Its object was to establish easier communication between the two German arsenals of Wilhelmshaven and Kiel, and to enable the German fleets to avoid the Danish Sound and Belts and escape a passage under the fire of Danish guns. The commerce of Hamburg and of Bremen with the Baltic will, however, derive advantage from the opening of this way of communication. The canal, which is about 98 kilometers long, is not international. Property, sovereignty, jurisdiction, administration and management all belong to the German Empire. (Bonfils, *Manuel de Droit International Public*, 1894, 274, citing Fleury, *Canaux maritimes*, *Revue des deux mondes*, Nov. 15, 1893.)

July 18, 1901, Mr. White, American ambassador at Berlin, reported that in accordance with a request made by the embassy "permission" had been granted to the U. S. S. "Enterprise" to pass through the Kaiser Wilhelm (Kiel) canal en route to the North Sea, the request having been made by the embassy at the instance of the commander of the ship. The embassy subsequently reported, on information furnished by the American consular agent at Kiel that the canal dues paid by the "Enterprise" amount to 400 marks and those by the U. S. S. "Buffalo" to 900 marks, which, considering the saving in time and coal, would apparently indicate that it was less expensive for the ships to go through the canal than to round the Danish peninsula. (Mr. White, amb. at Berlin, to Mr. Hay, Sec.

of State, July 18, 1901; Mr. Jackson, charge at Berlin, to Mr. Hay, Sec. of State, Oct. 19, 1901; For. Rel. 1901, 184.)

7. Panama Canal.

By the act of June 28, 1902, Congress authorized the President to acquire the rights of the New Panama Canal Company and to enter into a treaty with Colombia for the building of the canal across the Isthmus of Panama; and it also authorized him, in the event of failure to secure such a treaty after the lapse of a reasonable time, to enter into negotiations for the conclusion of a treaty for the construction of a canal by the way of Nicaragua. At the conclusion of a treaty with Colombia and the subsequent revolution on the Isthmus of Panama, after the failure of the Colombian Congress to ratify the treaty, November 18, 1903, a convention was signed at Washington with the Republic of Panama. This convention was duly ratified and the ratifications were exchanged at Washington, February 26, 1904. By this agreement the United States guarantees the independence of the Republic of Panama, while the latter grants to the United States in perpetuity for the construction, operation, and protection of the canal, a zone ten miles wide, extending the distance of five miles on either side of the middle line of the route of the proposed canal. This zone begins in the Caribbean Sea three marine miles from mean low-water mark, and extends across the Isthmus of Panama, into the Pacific Ocean to a distance of three marine miles from mean low-water mark; but the cities of Panama and Colon and the adjacent harbors are not included in the grant. Within this zone, and also within the limits of all auxiliary lands and waters which may be necessary and convenient for the construction, operation, and protection of the canal or of any auxiliary works, the Republic of Panama grants to the United States all the rights, power, and authority which the latter would possess and exercise if it were the sovereign of the territory, "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." By an order of June 24, 1904, the President of the United States declared the canal zone of the Isthmus of Panama to be open to the commerce of friendly nations, and established Ancon and Crystobal as ports of entry therein. (For. Rel. 1904, 8, 543, 585. As to sanitary conditions of the Isthmus of Panama, see For. Rel. 1904, 552. As to the transfer of the canal zone to the United States, see For. Rel. 1904, 582. As to the payment of the canal indemnity, see For. Rel. 1904, 651.)

LXIII.

MERCHANT VESSELS.

A vessel on the high seas, beyond the distance of a marine league from the shore (3 miles), is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation. But if she be forced within another jurisdiction by stress of weather, or other necessity, she does not cease to be within the jurisdiction of her own country. In this case, however, such jurisdiction is not exclusive to all purposes. For any unlawful acts done by her while thus lying in port, and for all contracts entered into by her master and owners while in port, she and they must be answerable to the laws of the place. Furthermore, by the comity of the law of nations, and especially by the present practice, merchant vessels entering ports of other nations are presumed to be allowed to bring with them, for their protection and government, the jurisdiction and laws of their own country.

1. Extraterritorial Right.

This Government does not apply the doctrine of extraterritoriality to its private or merchant ships in foreign ports, except in cases where it has been conceded by treaty or established usage, and it does not pretend that it has been so conceded in criminal cases to American merchant vessels in British ports. While each country can unquestionably exercise jurisdiction in its own ports over the private or merchant vessels of the other, it is presumed there is a mutual disposition on both sides not to exert it in a way which will interfere with the proper discipline of the ships of either nation. If every complaint of any individual of the crew of a vessel against the officers for ill-treatment is to be taken up by the civil authorities on shore, and these officers prosecuted as criminals, commercial intercourse will be subject to very great annoyance and serious detriment. (Mr. Marey, Sec. of State, to Mr. Crampton, Brit. min., April 19, 1856, MS. Notes to Gt. Brit. VII. 524.)

The local port authority has jurisdiction of acts committed on board of a foreign merchant ship while in port, provided those acts affect the peace of the port, but not otherwise; and its jurisdiction does not extend to acts internal to the ship, or occurring on the high seas. The local authority has right to enter on board a foreign merchant-man in port for the purpose of inquiry universally, but for the purpose of arrest only in matters within its ascertained jurisdiction. (Cushing, At. Gen. 1856, 8 Op. 73.)

“There is no doubt of the jurisdiction of our officers and tribunals to interfere in the way of prevention or of punishment in breaches of the peace occurring in American waters upon foreign vessels. There is no reason why our police, civil or naval, should hesitate to board a British vessel for the purpose of quelling a mutiny, attended with assaults upon the officers or violent resistance to the exercise of their legitimate authority—or subjecting refractory seamen to temporary confinement. The difficulty, however, is supposed to arise in cases where seamen simply refuse to work, and where confinement of them would reduce the vessel to a floating jail, without the power of motion. The remedy that is supposed to be wanted is a compulsion upon the men to do their duty; in other words, to enforce a specific obligation of their contract. No officer or tribunal of the United States has the capacity to apply such a remedy, except in execution of a treaty of convention, which seems necessary as the basis of laws of Congress regulating the mode of proceeding. A treaty is also necessary to justify the detention here of a foreign seaman upon the order of his consul, or otherwise than as a criminal offender. For any intervention beyond the limit thus indicated an agreement between the two Governments would seem to be requisite. I have to remark, however, that the question which I have discussed is purely a legal one, upon which I ought to reserve myself for consultation with the Attorney-General.” (Mr. Seward, Sec. of State, to Sir F. Bruce, Brit. min., Mar. 16, 1866, Dip. Cor. 1866, I. 231.)

The state of international law on the subject of private vessels in foreign ports....may be said to be this: So far as regards acts done at sea before her arrival in port, and acts done on board in port, by members of the crew to one another, and so far as regards the general regulation of the rights and duties of those belonging on board, the vessel is exempt from local jurisdiction; but, if the acts done on board affect the peace of the country in whose port she lies, or the persons or property of its subjects, to that extent that state has jurisdiction. The local authorities have a right to visit all such vessels, to ascertain the nature of any alleged occurrence on board. Of course, no exemption is ever claimed for injuries done by the vessel to property or persons in port, or for acts of her company not done on board the vessel, or for their personal contracts or civil obligations or duties relating to persons not of the ship's company. (Dana's *Wheaton*, §95, note 59.)

2. Papers of Ships.

The following list, extracted from the "Manual of Naval Prize Law," compiled by Sir Godfrey Lushington, K. C. B., specifies what are the various papers in addition to the custom house clearance, the manifest of cargo, and the bills of lading which may usually, although not necessarily, be found on board the vessels of the principal Maritime States, viz.: Austria—Scontrino ministeriale (certificate of registry). Patent sovrana (royal license). Giornale di navigazione (official log-book). Scartafaccio, giornale di navigazione cotidiano (ship's log-book). Charter party, if vessel is chartered. Ruolo dell'equipaggio (list of crew). Bill of health. Denmark—Royal passport, in Latin, with translation (available only for the voyage for which it is issued, unless renewed by attestation). Certificate of ownership. Build brief. Admeasurement brief. Burgher brief (certificate that the master is a Danish subject). Charter party (if vessel is chartered). Muster roll. Finland—Materbref (certificate of measurement). Belbref (certificate of build). Journalen (ship's log-book). Charter party (if vessel is chartered). Folkpass (crew list). France—L'acte de francisation (i. e. certificate of nationality). Le congé (sailing license). Le journal timbré (stamped log-book signed by consul on clearance of vessel). Le journal du bord (ship's log-book). National flag. Charter party (if vessel is chartered). Le rôle d'équipage (list of crew). Bill of health. Germany—Messbrief (certificate of measurement). Beilbrief (builder's certificate). See-pass (sailing license). Journal (ship's log-book). Charter party (if vessel is chartered). Musterrolle (muster roll). Great Britain—Certificate of registry. Official log-book. Ship's log-book. National flag and code of signals. Code of signals and numeral flags. Charter party (if vessel is chartered). Shipping articles. Muster roll. Bill of Health. Holland—Meetbrief (certificate of tonnage). Bijlbrief (certificate of ownership). Zeebrief (sailing license). Journal (ship's log-book). National flag. Charter party (if vessel is chartered). Monster-rol (muster roll). Bill of health. Italy—Scontrino ministeriale (certificate of registry). Patente sovrana (royal license). Giornale di navigazione (official log-book). Scartafaccio, giornale di navigazione cotidiano (ship's log-book). Charter party (if vessel is chartered). Ruolo dell'equipaggio (list of crew). Bill of health. Norway—Bylbrev (certificate of build). Maalebrev (certificate of measurement). Nationalitetsbrevius (certificate of nationality). Journale (ship's log-book). Charter party (if the vessel is chartered). Muster roll or mand-

skabsliste, or volkelist (list of crew). Vessels purchased by Norwegian subjects in foreign ports are permitted for two years to sail without a *bülbrev* or *maalebrev*. Russia—L'acte de construction ou d'acquisition du navire (builder's certificate). La patente portant autorisation d'arborer le pavillon marchand russe (certificate of nationality). Journal du capitaine (ship's log-book). Charter party (if vessel is chartered). Le role d'équipage (crew list). Spain—La patente real (royal license). El diario de navegacion (ship's log-book). National flag. Charter party (if vessel is chartered). El rol (list of crew). Bill of health. Sweden—A passport from the chief magistrate or commissioner of customs. *Bilbref* (builder's certificate). *Matebref* (certificate of measurement). *Fribref* (certificate of registry). Journalen (ship's log-book). Charter party (if vessel is chartered). *Folkpass* or *sjemansrubla* (muster roll). Vessels purchased by Swedish subjects in foreign ports are permitted, on application to the Board of Commerce, to sail for one year without a *fribref*. United States—Certificate of registry. Sea letter, or certificate of ownership. Ship's log-book. National flag. Charter party (if the vessel is chartered). Shipping articles. Muster roll. Bill of health. (Halleck's Int. Law, 4th Ed. by Baker, Vol. II, pp. 117-119.)

LXIV.

SHIPS OF WAR.

Ships of war, . . . being the property of the state and armed by it for its defense, are an emanation of it. Their commanders and officers are also functionaries of the country, delegates of its sovereignty, agents of its executive power, and, up to a certain point, of its judicial power. On board of a ship of war, everything is subject to the rules and codes of the country to which the ship belongs, and it is for that reason that it partakes fully of the independence of the sovereignty which has authorized it and of which it is the delegation.

A difference so marked in its character and objects as that of ships of war and ships of commerce brings as its consequences:

1. That the manner and means of proving their nationality are different:

2. That the privileges and immunities of each are also different. . . .

Armed and authorized by the government of an independent

power, commanded by officers, public functionaries, who represent, with the whole crew, the public force, ships of war are, in their personification, like an emanation of the state and a continuation of its territory. From this it follows that no individual foreign to the government has the right to interfere in what goes on on board and still less to penetrate there by main force.

1. Extraterritoriality.

It is usual to describe, theoretically, this collection of circumstances by the axiom that the ship of war is a portion of the territory of the nation to which it belongs, enjoying, in consequence, all the immunities attached to territorial independence. It is this that we are wont to express by the word extraterritoriality, the actual meaning of which is not truly applicable, but peculiarly describes the conjunction of privileges, immunities, and rights.

To justify the use of this expression, it suffices to consider that every ship is a floating habitation, bearing a population placed under the protection and submitted to the laws and government of the state. In the special case of a ship of war, we can add that it is a military place, a mobile fortress which contains a fraction of the state to which it belongs, governed by the functionaries, the military and administrative agents, delegated by the same state....

It is a constant rule that, for ships of war, the principle of extraterritoriality is always absolute even in the ports and territorial waters of another country, and that such ships remain, as to their interior and exterior control, subject only to the laws of the state to which they belong. With the state in whose waters they may happen to be, they simply maintain international relations, through the intermediary of the competent functionaries of the locality....

It is no less certain that the local sovereign may forbid the entrance and mooring of a ship of war and may also exercise surveillance over the ship when he has reason to think its presence dangerous, or when some legitimate precaution requires or justifies such a measure. In such case, in order to avoid all difficulty, explanations ought to be given to the government to which the ship belongs.

2. Limitations of Exemption from Jurisdiction.

Moreover, the immunity of ships of war does not exempt them from responsibility for acts of aggression, of violence or of discourtesy which they may commit in the waters of a foreign nation. That nation always reserves the right of legitimate self-defense

against such acts. Such ships are not exempt from the observance of sanitary regulations of the ports which they may wish to enter;The public and official character of ships of war imposes on them the obligation to be first in giving an example of the most scrupulous respect for the ordinances of maritime police, the rules of the port, and all provisions for the common interest. (Testa, *Le Droit Public International Maritime*, traduit, par Boutiron, 1886, p. 83 et seq.)

Phillimore (*International Law*, vol. 1, sec. 341), after stating that ships of war enjoy the privilege of extraterritoriality, says that this privilege "is extended, by the reason of the thing, to boats, tenders, and all appurtenances of a ship of war, but it does not cover offenses against the territorial law committed upon shore, though the commanders of vessels are entitled to be apprised of the circumstances attending and causes justifying the arrest of any one of their crew, and to secure to them, through the agency of diplomatic or consular ministers, the administration of justice."

"A ship of war when in a foreign friendly port is ordinarily exempt from the jurisdiction of such port." (Mr. Randolph, Sec. of State, to Mr. Hammond, *Brit. min.*, July 23, 1794, 7 MS. Dom. Let. 55.)

"Foreign armed vessels, adopting the character of merchant ships by carrying merchandise, rend themselves subject to the revenue laws." (Wirt, *At.-Gen.* 1820, 1 Op. 337.)

Ships of war enjoy full rights of extraterritoriality in foreign ports and territorial waters.

Therefore a ship of war, or any prize of hers, in command of a public officer, possesses, in the ports of the United States, the right of extraterritoriality and is exempt from the local jurisdiction.

A prisoner of war on board such a foreign ship of war, or of her prize, can not be released by habeas corpus issuing from courts of the United States or of a particular State. "So long as they (the prisoners) remained on board that ship, they were in the territory and jurisdiction of her sovereign. There, the neutral has no right to meddle with them." Should they be taken on shore, they become subject to the local jurisdiction, or not, according as it may be agreed between the political authorities of the belligerent and neutral power. (Opinions of Cushing, *At.-Gen.*, April 28, 1855, and Sept. 6, 1856, 7 Op. 122, 131, and 8 Op. 73.)

"During the war in which Russia was a party on the one side, and England, France and other powers on the other, questions relating to this subject arose, some of which were referred by my

predecessor, Mr. William L. Marey, to Caleb Cushing, esq., then Attorney-General. An elaborate opinion on the latter relative to belligerent asylum, bears date the 28th of April, 1855. One of its conclusions is that a foreign ship of war, or any prize of hers in command of a public officer, possesses in the ports of the United States the rights of extraterritoriality, and is not subject to local jurisdiction. This view was repeated in another opinion of Mr. Cushing of the 8th of September, 1856, which declared that ships of war enjoy the full rights of extraterritoriality in foreign ports and territorial waters." (Mr. Evarts, Sec. of State, to Mr. Comacho, Venezuelan min., Dec. 9, 1880, MS. Notes to Venez., I. 210.)

3. Supplies Free of Duty.

The privilege granted to foreign men-of-war under section 2982, Revised Statutes, of purchasing supplies from the public warehouses duty free when that privilege is reciprocated in the ports of the nation to which the vessel belongs, is limited to purchasing in the bonded warehouses supplies deposited therein pending withdrawal for consumption. The duty referred to from which the supplies so purchased shall be free is the import duty. (Griggs, At-Gen., March 9, 1901, 23 Op. 418.)

The officers of a vessel of war belonging to a friendly foreign nation can not set up extraterritoriality when unofficially on shore in a port in whose harbor their vessel is temporarily moored. (Mr. Randolph, Sec. of State, to Mr. Hammond, July 23, 1794, 7 MS. Dom. Let. 55.)

4. Asylum.

Though the commander of a foreign man-of-war is not bound to give up anyone on board, yet "any person....attached to such a man-of-war, charged with an offence on shore, is liable to arrest therefor in the country where the offence may have been committed." (Mr. Fish, Sec. of State, to Commodore Case, Jan. 27, 1872, 92 MS. Dom. Let. 322.)

LXV.

NATIONALITY OF VESSELS.

1. Evidence of the Flag.

The Treasury regulations, article 93, which declare such vessels entitled to the protection of the authorities and flag of the United States, recognize the rights of these vessels to carry it.

2. Flags.

The word "flag," when used either in public or private international law, in maritime subjects, designates the nationality of the vessel, arising from ownership, and the "law of the flag" is that which ascertains when a transaction is governed by the law of the country where the owner of the vessel resides, under which the master holds his authority to bind the vessel or its owner, or which governs the internal discipline of a ship or its liability to others. Expressions also have been used at times, with some looseness, in the maritime law, in which a vessel is spoken of as having a personality of its own, in reference to its liability in rem, independently of that of its owners. Such expressions are used by way of illustration, not of definition, and in this respect a vessel does not differ from other kinds of property; even real estate may in the same manner be considered as offending or guilty as well as indebted.

These expressions are used, however, with regard to an entirely different subject. A vessel as a subject of nationality is not considered a personality any more than any other chattel, and can not have any other nationality impressed on it except that arising from ownership. The place in which a vessel is built does not give it nationality any more than the place of origin affects that of its cargo. It is the residence of the owner which stamps alike the vessel and its cargo with its national character.

A national flag is *prima facie* evidence, on the high seas, that the nationality of the ship carrying it corresponds to that of the flag. It is true that when there is probably ground to believe that the flag is assumed for piratical purposes, this will excuse the arrest and search of the vessel. But unless there be such probable cause the vessel must be assumed by foreign cruisers to be entitled to carry the flag she flies.

"Maritime nations are free to fix the conditions on which they will recognize the nationality of foreign vessels in water dependent upon their own territory; but the mutual interests of nations require that those conditions should not be of such a nature as to interfere with freedom of commerce and of navigation.

"In all cases the vessel should be furnished with proof of its nationality by means of authentic documents, or of certain distinctive signs which enable one to tell at first sight to what nation it belongs.

"The flag is the visible sign of the national character of a ship.

Each state has its own colors, under which its nationals sail and which can not be used without its permission.

“The assumption of the flag of a foreign state without its authorization is considered as a violation of international law, as a device both fraudulent and injurious to the honor of such state. Both the state whose flag is wrongfully used and that in regard to which the use of the false flag is made have the right to demand the punishment of the guilty persons and, according to circumstances, to punish them themselves.

3. Proof of Nationality.

“The flag alone does not suffice to prove the nationality of the ship; it offers too great facilities for abuse and usurpations. In order to have a more certain means of control, maritime nations have agreed that every merchant ship must be provided with papers or sea letters, which the captain is bound to produce whenever it is legitimately required. The ship’s papers most usually consist of an act indicating the signal of the ship, its dimensions, its name, the details of its construction; the act authorizing the vessel to bear the national flag; a crew list mentioning the names and nationality of the sailors; and a bill of sale or of property and a passport or patent of navigation.” (Calvo, *Droit Int.* [5th ed.], I.)

4. Registry.

“Registered vessels, which by sale (this is understood to mean a voluntary sale made by the American owner) become the property of foreigners, can never afterwards be registered, even tho’ they should be again transferred to their former owners, or any other American citizen. This is expressly prohibited by the act of 27th of June, 1797. But registered vessels which, having been seized or captured and condemned, become the property of foreigners, are not in those cases absolutely disqualified from being registered anew, the . . . act declaring that if the owner or owners, at the time of seizure or capture, shall regain a property in such vessels, by purchase or otherwise, they shall not be debarred from claiming and receiving new registers for the same, as they might or could have done if that act had not been passed.” (Circular of the Comptroller of the Treasury, Sept. 10, 1803, transmitted by Mr. Madison, Sec. of State, to U. S. consuls and commercial agents, Oct. 1, 1803, 1 MS. Desp. to Consuls, 185, 186.)

A contract in fraud of the positive laws and public policy of the United States, which excludes an alien from having any interest in an American registered vessel, by way of trust, confidence, or otherwise, will not be enforced. (*Duncansons v. McLure* [1804], supreme court of Pennsylvania, 4 Dallas 308; overruling *Murgatroyd v. Crawford*, 3 Dallas, 491.)

The benefit of the registry of an American vessel is lost to the owner during his residence in a foreign country, but upon his return to this country the disability ceases; nor does the fact that during the foreign residence of the owner the vessel carried a foreign flag work any divestiture of title, nor render the disability perpetual. (*Wirt*, At.-Gen. [1821], 1 Op. 523.)

The certificate of a vessel's registry and proof that she carried the American flag establish a *prima facie* case of proper registry under the laws of the United States and of the nationality of the vessel and her owners. (*St. Clair v. United States* [1894], 154 U. S. 134, 151.)

Under section 4132, Revised Statutes, a vessel lawfully condemned and sold as prize of war to an American citizen is entitled to an American registry, and this right is not lost by the subsequent reversal of the decree of condemnation by the Supreme Court of the United States. (*Griggs*, At.-Gen. [Feb. 17, 1900], 23 Op. 29, distinguishing this case from that involved in the opinion of December 14, 1840, 3 Op. 606.)

“While the navigation laws give such commercial privileges to vessels built in the United States, they in no way forbid citizens of the United States to own vessels built in other countries, nor is the protection of the United States in any way denied to such foreign-built vessels if they are owned by citizens of the United States.”

LXVI.

SALUTES BETWEEN SHIPS AND FORTS.

Vessels of war, in entering foreign ports, or in passing foreign forts, batteries, or garrisons, salute first, without reference to the relative rank of the officers of the ships and forts. Such salutes are always to be returned gun for gun. This salute is a compliment to the flag, and, consequently, is international. The same rule holds with respect to the interchange of compliments and visits with the

authorities on shore; the compliment or visit being first made from the vessel, without regard to relative rank, even if it were possible to fix any relative rank for officers so different in their nature and character. The rule, making such compliments international, avoids any necessity of attempting such assimilation.

1. Vessels Carrying Sovereigns.

An apparent exception is made to this rule in the case of vessels carrying persons of sovereign rank or members of the royal family. In such cases, the forts, batteries, and garrisons, always salute first. But such salutes are intended expressly for the persons carried, and not for the vessel carrying them, and, consequently, the vessel does not return the salute. It is customary, however, for such vessel, if foreign, to afterward salute the fort or garrison in the usual manner, which salute is, of course, to be returned gun for gun. Where vessels of war, in foreign ports, land or receive on board their own sovereigns, or officers of their own government, the salutes to be given and ceremonies to be observed are to be determined by their own laws and regulations. The same remark applies to the compliments to be paid on such occasions by other ships in port, and by the military establishments on shore, each being governed by their own laws and regulations. Every country determines for itself the salutes to be paid to its own authorities, and it will hardly be expected that any higher compliment will be paid to those of other countries of the same rank. All such matters, however, should be regulated by previous arrangement, and in cases of differences which cannot be accommodated, the party dissenting will take no part in the ceremonies.

2. Salutes Between Ships of War.

Ship or ships of war of one country, meeting in port, exchange salutes gun for gun. The last arrival salutes first. Salutes are not to be exchanged where the regulations of the place do not permit them.

3. Visits.

With respect to the ceremony of visit, courtesy requires that the commander of the vessel in port shall first send a message of compliment and inquiry to the commander of a vessel coming into port, and such message of compliment is to be immediately returned by the new comer; after which the visits of ceremony are to be exchanged, the lowest in rank visiting first. Since March 12, 1877,

the British Government having communicated with the various maritime Powers on the subject, the following procedure, in which the maritime Powers generally concur, has been observed in all ports whatsoever by the commanding officers of the ships of the several maritime Powers, viz.:

Preliminary Visits.—The flag or other officer in command of one or more ships of war in port, whatever may be his rank, will, upon the arrival of any ship or ships of war of another nationality, send an officer to such arriving ship, or in case of a fleet or squadron, to the ship of the officer in chief command of it, to offer the customary courtesies. The captain of the ship to which this visit is paid will send an officer to return it.

Official Visit.—Within twenty-four hours of arrival the flag or other officer in chief command of the arriving ship or ships will visit the officer in chief command of the fleet or squadron or single ship of war (as the case may be) of another nationality, present at the port, if he be his equal in grade, and the visit will be returned within twenty-four hours of being paid. In the case of officers of different grades, the inferior will, in such cases, pay the first visit, the same limits of time being observed as to the visit and its return.

4. Grades.

The grades are: admiral, vice-admiral, rear-admiral, commodore (now obsolete), captain, commander, lieutenant or other commanding officer.

Officers of superior grades will return calls as follows: All flag officers, including commodores, will return the visits of captains and those of grades superior to captains. They will send their flag captains or commanders to return the visits of commanders, lieutenants, and other officers in command. Captains and officers of a lower grade will return the call of commanders and officers of inferior rank in command. In the case of a fleet or squadron arriving or being in port, and after the interchange of visits between the senior officers shall have taken place, the captains or other officers in command of the several ships of war arriving will call upon the captains or other officers in command of the ships of war in port, who will return the visits.

5. Celebration of Fetes.

Vessels of war in foreign ports celebrate their own fetes according to the regulation of their own Government. Courtesy also requires

them to take part in the national fetes of the place, by joining in the public demonstrations of joy or grief. The same mark of respect is shown to vessels of a third Power which celebrate fetes in foreign ports. But if such celebrations are of a character to offend or wound the feelings of their own countrymen, or the nation in whose waters they are anchored—as public rejoicings for a victory gained—ships of war will remain as silent spectators, or leave the ports, according to circumstances of the case. In public ceremonies upon land, the commandants of vessels or fleets usually land with the officers of their staff, and receive a place of honor, according to the hierarchy of rank, precedence being determined by grade, and, if equal, by date of arrival. In case of disputes as to rank, it is proper for the contestants to withdraw and become mere spectators of the ceremonies.

6. U. S. Regulations Regarding Salutes.

By the Regulations for the Navy of the United States, June 30, 1905, it is ordered:

59. When the president of a foreign republic or a foreign sovereign visits a ship of the navy, the same honors as those prescribed for the reception of the President of the United States shall be extended, except that the national ensign of the country represented shall be displayed at the main during the entire visit, and the national air of that country played by the band.

60. When any member of the royal family visits a ship of the Navy, the honors prescribed for the President shall be extended, except that the national flag shall be displayed only during the salute.

61. Whenever a ship of the navy falls in with a friendly foreign ship of war flying the standard or flag of a president of a republic, sovereign, or member of a royal family, or passes near such standard or flag, if flying elsewhere than from a ship of war, a national salute shall be fired and the flag of the nation of the president, sovereign, or prince displayed at the main during the salute.

117. When a ship of the navy enters a port of any foreign nation where there is a fort or battery displaying the national flag, or where a commissioned ship of war of that nation is lying, she shall fire a salute of twenty-one guns unless the captain has reason to believe that the salute cannot be returned; and in this case he shall immediately take steps to ascertain the local regulations or customs. This salute shall be the first fired after entering the fort. The ensign

of the nation saluted shall be displayed at the main during the salute. In case two or more ships enter in company only the senior shall salute.

118 (1). When a ship of the navy falls in at sea with a friendly foreign ship of war flying the flag or pennant of a flag officer or commodore she shall exchange salutes with such ship of war in the same manner as when meeting similar ships of the United States, except that the salute will be returned gun for gun.

(2) In port, if several flag officers are to be saluted, the salutes shall be fired in the order of their grade; if of the same grade, priority shall be given, first, to the nationality of the port, and, second, to the length of service of the flag officers in their respective commands. As between flag officers of the same grade, the last comer will salute first. These salutes shall be fired as soon as possible after the usual boarding visits have been made.

119. On the occasion of the first official visit of a foreign naval or military officer, a member of the diplomatic corps, or other distinguished official to a ship of the navy, he is to receive the same honors as an official of the United States of the same grade or rank. A foreign official not thus provided for, when visiting a ship of the navy, may be saluted either at his reception or departure with the number of guns he would be entitled to receive if visiting a ship of his own nation, or the number prescribed by the senior officer, not, however, to exceed nineteen. No personal flag of any foreign official shall be saluted except as prescribed in articles 61 and 118, unless assurance is received that the salute will be returned.

120. No salute shall be fired in honor of any nation, or of any official of any nation, not formally recognized by the Government of the United States.

121. Officers and men of the navy shall extend to foreign officials, when passing near ships of the navy with the insigna of their rank flying, or when met ashore or afloat, the personal salutes and other marks of respect due to similar officials of the United States.

122. No ship of the navy shall lower her sails or dip her ensign unless in return for such compliments.

123. National airs of foreign states shall be played by the band as a compliment as follows:

(a) In the morning, after colors, the national air of the port, followed by the national airs of the ships of war present in the order of rank (see art. 118).

(b) When passing or being passed by a foreign ship of war close aboard, at which time officers and men on deck in sight shall salute and sentries present arms.

141 (b) When firing a national salute upon entering a foreign port, or when returning the same from a ship of war of a foreign nation, the ensign of the foreign nation shall be displayed at the main.

(c) On all occasions of celebrating foreign national anniversaries or festivals, when salutes are fired, the ensign of the nation celebrating the day shall be displayed at the main during the salute and for such further time as the ships of such nation present may remain dressed, and in the case of an anniversary of the nation in whose waters the ship is lying, where no ships of that nation are present, until sunset.

(d) While saluting the flag or broad pennant of a foreign flag officer or commodore, or returning a foreign salute to a flag officer or commodore of the United States, the ensign of the foreign nation shall be displayed at the fore.

(e) During personal salutes fired in honor of foreign naval, military, diplomatic, and consular officials, while visiting ships of the navy, or other foreigners of distinction not provided for in section 1, the ensign of the foreign nation to which the visitor belongs shall be displayed at the fore.

LXVII.

PRIVATEERS OR LETTERS OF MARQUE.

A private armed vessel or privateer is a vessel owned and officered by private persons, but acting under a commission from the State, usually called letters of marque. It answers to a company on land raised and commanded by private persons, but acting under rules from the supreme authority, rather than to one raised and acting without license, which would resemble a privateer without commission. (It is equipped not so much to fight an enemy's war ship, to which it would be unequal, as to plunder his commerce; its value to the state commissioning it is thus mainly incidental.) The commission, on both elements, alone gives a right to the thing captured, and insures good treatment from the enemy. A private vessel levying war without such license, although not engaged in a

piratical act, would fare hardly in the enemy's hands. (Wooley's Int. Law, §127.)

The term "letter of marque," though originally indicating the commission issued to a privateer, came in the course of time to be applied almost exclusively to a trading vessel that was authorized to make reprisals, whether in peace or in war. The term "privateer" was reserved for a vessel which, although privately fitted out, was employed solely as a cruiser. Hamilton, therefore, in his circular of August 4, 1793, said: "The term privateer is understood not to extend to vessels armed for merchandise and war, commonly called with us letters of marque, nor, of course, to vessels of war in the immediate service of the government of either of the powers at war." (Am. State Papers, For. Rel. I. 140.)

By Swift, a privateer is defined to be an armed vessel, belonging to one or more private individuals, licensed by Government to take prizes from an enemy. In Wilhelm's Military Dictionary (Phil. 1881), the name "partisan" is stated to be given to "small corps detached from the main body of an army, and acting independently against the enemy. In partisan warfare much liberty is allowed to partisans." But if so in military, why not in naval warfare? The objection is to the plunder of private property on the high seas, against which the United States have always remonstrated, not to the particular agency employed. In McCulloch's Commercial Dictionary, London, 1882, privateers are defined to be "ships of war fitted out by private individuals to annoy and plunder the enemy. But before commencing their operations, it is indispensable that they obtain letters of marque and reprisal from the government whose subjects they are, authorizing them to commit hostilities, and that they conform strictly to the rules laid down for the regulation of their conduct. All private individuals attacking others at sea, unless empowered by letters of marque, are to be considered pirates." (Wharton, Com. Am. Law §201, note; citing Butler-Johnstone, Handbook of Maritime Rights [London, 1876], 12.)

LXVIII.

BLOCKADE IN TIME OF WAR.

A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy. In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective,

—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline. The question whether a blockade is effective is a question of fact.

A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather. A blockade must be applied impartially to the ships of all nations.

In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there. The Commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

1. Declaration of Blockade.

A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name. It specifies (1) The date when the blockade begins; (2) The geographical limits of the coastline under blockade; (3) The period within which neutral vessels may come out.

A declaration of blockade is notified (1) To neutral Powers, by the blockading Power by means of a communication addressed to the Government direct, or to their representatives accredited to it; (2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible. The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in a like manner as the declaration of a blockade. The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

2. Liability of Neutral Vessels.

The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade. A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

In case of breach of blockade by a neutral vessel, failing proof to

the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time. If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time. If, through the negligence of the officer commanding the blockading force, no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective. The blockading forces must not bar access to neutral ports or coasts. Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port. A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade. (International Naval Conference.)

3. Blockading Operations.

When a government decides to undertake blockading operations against some part of the enemy coast it details a certain number of warships to take part in the blockade and intrusts the command to an officer whose duty is to use them for the purpose of making the blockade effective. The commander of the naval force thus formed posts the ships at his disposal according to the line of the coast and the geographical position of the blockaded places and instructs each ship as to the part which she has to play, and especially as to the zone which she is to watch. All the zones watched taken together, and so organized as to make the blockade effective, form the area of operations of the blockading naval force.

The area of operations of a blockading naval force may be rather wide, but as it depends on the number of ships contributing to the effectiveness of the blockade and is always limited by the con-

dition that it should be effective, it will never reach distant seas where merchant vessels sail which are perhaps making for the blockaded ports, but whose destination is contingent on the changes which circumstances may produce in the blockade during their voyage. To sum up, the idea of the area of operations joined with that of effectiveness, as we have tried to define it—that is to say, including the zone of operations of the blockading forces—allows the belligerent effectively to exercise the right of blockade, which he admittedly possesses, and, on the other hand, saves neutrals from exposure to the drawbacks of blockade at a great distance, while it leaves them free to run the risk which they knowingly incur by approaching points to which access is forbidden by the belligerent.

Cases may occur in which a single ship will be enough to keep a blockade effective—for instance, at the entrance of a port or at the mouth of a river with a small estuary, so long as circumstances allow the blockading ship to stay near enough to the entrance. In that case the area of operations is itself near the coast. But on the other hand, if circumstances force her to remain far off, one ship may not be enough to secure effectiveness, and to maintain this she will then have to be supported by others. From this cause the area of operations becomes wider and extends farther from the coast. It may therefore vary with circumstances and with the number of blockading ships, but it will always be limited by the condition that effectiveness must be assured.

It does not seem possible to fix the limits of the area of operations in definite figures any more than to fix beforehand and definitely the number of ships necessary to assure the effectiveness of any blockade. These points must be settled according to circumstances in each particular case of a blockade. This might perhaps be done at the time of making the declaration.

LXIX.

CONTRABAND OF WAR.

The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband. These articles have been agreed upon by the International Naval Congress, London, 1909.

1. Absolute Contraband.

1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts. 2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts. 3) Powder and explosives specially prepared for use in war. 4) Gun-mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts. 5) Clothing and equipment of a distinctively military character. 6) All kinds of harness of a distinctively military character. 7) Saddle, draught, and pack animals suitable for use in war. 8) Articles of camp equipment, and their distinctive component parts. 9) Armor plates. 10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war. 11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified. Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

2. Conditional Contraband.

The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:

1) Foodstuffs. 2) Forage and grain, suitable for feeding animals. 3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war. 4) Gold and silver in coin or bullion; paper money. 5) Vehicles of all kinds available for use in war, and their component parts. 6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts. 7) Railway material, both fixed and rolling stock, and material for telegraphs, wireless telegraphs, and telephones. 8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines. 9) Fuel; lubricants. 10) Powder and explosives not specially prepared for use in war. 11) Barbed wire and implements for fixing and cutting the same.

12) Horseshoes and shoeing materials. 13) Harness and saddlery. 14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

3. Articles Adapted to Form Contraband.

Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in list given above, may be added to the list of conditional contraband by a declaration which must be notified to the Governments of other Powers, or to the representatives accredited to the Power making the declaration. If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in the preceding paragraphs, such intention shall be announced by a declaration, which must be notified to the Governments of other Powers in the manner just indicated. Articles which are not susceptible of use in war may not be declared contraband of war.

4. Articles Not Contraband.

The following may not be declared contraband of war: 1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same. 2) Oil seeds and nuts, copra. 3) Rubber, resins, gums, and lacs; hops. 4) Raw hides and horns, bones and ivory. 5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes. 6) Metallic ores. 7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles. 8) Chinaware and glass. 9) Paper and paper-making materials. 10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish. 11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper. 12) Agricultural, mining, textile, and printing machinery. 13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral. 14) Clocks and watches, other than chronometers. 15) Fashion and fancy goods. 16) Feathers of all kinds, hairs, and bristles. 17) Articles of household furniture and decoration; office furniture and requisites.

5. Additional Articles Not Contraband.

Likewise the following may not be treated as contraband of war: 1) Articles serving exclusively to aid the sick and wounded. They can, however in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is

that specified in the following paragraph: 2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of the crew and passengers during the voyage.

6. Absolute Contraband Liable to Capture.

Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land. Proof of the destination specified in the foregoing is complete in the following cases: 1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy. 2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

7. Vessel Carrying Contraband.

Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation. Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. The destination referred to is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband. In cases where the above presumptions do not arise, the destination is presumed to be innocent. These presumptions may be rebutted.

8. Vessel Carrying Conditional Contraband.

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occu-

pied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port. The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation. Notwithstanding these provisions, conditional contraband, if shown to have the destination referred to in the preceding paragraph, is liable to capture in cases where the enemy country has no seaport.

LXX.

VISIT AND SEARCH.

“The sea is open to all nations; no nation has an exclusive property in the sea.” (Case of *The Resolution*, Federal Court of Appeals, 1781, 2 Dallas, 19, 22.)

To detain for examination is a right which a belligerent may exercise over every vessel, not a national vessel, that he meets with on the ocean. (*The Eleanor*, 1871, 2 Wheat. 345.)

1. Definition.

“What is this right of search? Is it a substantive and independent right wantonly, and in the pride of power, to vex and harass neutral commerce, because there is a capacity to do so? or to indulge the idle and mischievous curiosity of looking into neutral trade? or the assumption of a right to control it? If it be such a substantive and independent right, it would be better that cargoes should be inspected in port before the sailing of the vessel, or that belligerent licenses should be procured. But this is not its character. . . . It (the right of search) has been truly denominated a right growing out of, and ancillary to the greater right of capture. Where this greater right may be legally exercised without search, the right of search can never rise or come into question.” (Marshall, Ch. J., *The Nereide*, 1815, 9 Cranch, 388, 427.)

2. Right Exercised by Cruiser.

A cruiser of one nation has a right to know the national character of any strange ship he may meet at sea, but this right is not a perfect one, and the violation of it can not be punished by capture

and condemnation, nor even by detention. The party making the inquiry must put up his own colors, or in some other way make himself fully known, before he can lawfully demand such knowledge from the other vessel. If this be refused, the inquiring vessel may fire a blank shot, and, in case of further delay, a shotted gun may be fired across the bows of the delinquent, by way of positive summons. Any measures beyond the summoning shot, which the commander of an armed ship may take for the purpose of ascertaining the nationality of another vessel, must be at his peril; for the right of a ship to pass unmolested depends upon her actual character, and not upon that which was erroneously attributed to her, even though her own conduct may have caused the mistake. The latter may affect the amount of reparation, but not the lawfulness of the act. The right of a public ship to hail or speak with a stranger must be exercised within the same limits as that of any other authorized armed vessel. When a vessel thus interrogated answers either in words or by hoisting her flag, the response must be taken for true, and she must be allowed to keep her way. But this right of inquiring can be exercised only on the high seas, and is limited to time of peace. (Black, *At. Gen.*, 1860, 9 Op. 455.)

3. Duties of Merchant Vessels.

The captain of a merchant steamer when brought to by a man-of-war is not privileged from sending his papers on board, if so required, by the fact that he has a Government mail in his charge. On the contrary, he is bound by that circumstance to strict performance of neutral duties and to special respect for belligerent rights. (The *Peterhoff*, 5 Wall. 28.)

“13. This right should be exercised with tact and consideration, and in strict conformity with treaty provisions, wherever they exist. The following directions are given, subject to any special treaty stipulations: After firing a blank charge, and causing the vessel to lie to, the cruiser should send a small boat, no larger than a whale-boat, with an officer to conduct the search. There may be arms in the boat, but the men should not wear them on their persons. The officer wearing only his side arms, and accompanied on board by not more than two men of his boat's crew, unarmed, should first examine the vessel's papers to ascertain her nationality and her ports of departure and destination. If she is neutral, and trading between neutral ports, the examination goes no further. If she is neutral, and bound to an enemy's port not blockaded, the papers which indi-

cate the character of her cargo should be examined. If these show contraband of war, the vessel should be seized; if not, she should be set free, unless, by reason of strong grounds of suspicion, a further search should seem to be requisite." (U. S. Instructions to Blockading Vessels and Cruisers, General Orders, No. 492, June 20, 1898, For. Rel. 1898, 781.)

4. Mail Steamers and Mails.

In the postal treaty between the United States and Great Britain of 1848 it was provided that in case of war between the two nations the mail packets should be unmolested for six weeks after notice by either Government that the mail service was to be discontinued, in which case they should have safe conduct to return. (9 Stat. 969.)

"The Trent, though she carried mails, was a contract, or merchant vessel, a common carrier for hire. Maritime law knows only three classes of vessels,—vessels of war, revenue vessels, and merchant vessels. The Trent falls within the latter class. Whatever disputes have existed concerning a right of visitation or search in time of peace, none, it is supposed, has existed in modern times about the right of a belligerent in time of war to capture contraband in neutral and even friendly merchant vessels, and of the right of visitation and search in order to determine whether they are neutral and are documented as such according to the law of nations." (Mr. Seward to Lord Lyons, Dec. 26, 1861, 55 Br. & For. State Papers 627, 631.)

"Fourthly. That, to avoid difficulty and error in relation to papers which strictly belong to the captured vessel, and mails that are carried, or parcels under official seals, you will, in the words of the law, 'preserve all the papers and writings found on board and transmit the whole of the originals unmutilated to the judge of the district to which such prize is ordered to proceed;' but official seals, or locks, or fastenings of foreign authorities, are in no case, nor on any pretext, to be broken, or parcels covered by them read by any naval authorities, but all bags or other things covering such parcels, and duly seized and fastened by foreign authorities, will be, in the discretion of the United States officer to whom they may come, delivered to the consul, commanding naval officer, or legation of the foreign government, to be opened, upon the understanding that whatever is contraband or important as evidence concerning the character of a captured vessel will be remitted to the prize court, or to the Secretary of State at Washington, or such sealed bag or

parcels may be at once forwarded to this Department, to the end that the proper authorities of the foreign government may receive the same without delay." (Instructions issued by the Secretary of the Navy, Aug. 18, 1862, the naval officers of the United States, Official Records of the Union and Confederate Navies, Ser. I., vol. 1, pp. 417, 418.)

5. Resistance to Search.

"A persistent resistance by a neutral vessel to submit to a search renders it confiscable, according to the settled determinations of the English Admiralty. It would be much to be regretted if any of our vessels should be condemned for this cause, unless under circumstances which compromised their neutrality." (Mr. Marcy, Sec. of State, to Mr. Buchanan, min. to England, April 13, 1854, H. Ex. Doc. 103, 33 Cong. 1 sess. 12, 13.)

"A vessel under any circumstances resisting visit, destroying her papers, presenting fraudulent papers, or attempting to escape, should be sent in for adjudication." (U. S. Instructions to Blockading Vessels and Cruisers, General Orders, No. 492, June 20, 1898, For. Rel. 1898, 780.)

"14. Irrespective of the character of the cargo, or her purported destination, a neutral vessel should be seized if she—

"(1) Attempts to avoid search by escape; but this must be clearly evident.

"(2) Resists search with violence.

"(3) Presents fraudulent papers.

"(4) Is not supplied with the necessary papers to establish the objects of search.

"(5) Destroys, defaces, or conceals papers.

"The papers generally to be expected on board of a vessel are:

"(1) The register.

"(2) The crew list.

"(3) The log book.

"(4) A bill of health.

"(5) A charter party.

"(6) Invoices.

"(7) Bills of lading."

(Instructions to U. S. Blockading Vessels and Cruisers, General Orders, No. 492, June 20, 1898, For. Rel. 1898, 781.)

Stockton, in his Naval War Code, art. 23, gave the following as the "papers generally expected to be on board of a vessel:" (1) Register, (2) crew and passenger list, (3) log book, (4) bill of health, (5) manifest of cargo, (6) charter-party, if the vessel is chartered, (7) invoices and bills of lading.

"A certificate under the authority of the United States must be taken by foreign powers as genuine, and can be impeached by them only by application to the Government of the United States." (Wharton, Int. Law Digest, Art. 409, quoted in *The Conrad*, 1902, 37 Ct. Cl. 459.)

The act of Congress of July 9, 1798, 1 Stat. 578, which authorized merchant vessels to carry arms for protection, could not change the rule of international law which gave a belligerent the right of search, nor save a vessel from lawful confiscation for resisting such right.

The Jane (1901), 37 Ct. Cl. 24.

It was held in this case that where an American vessel attempted flight from an unknown vessel, but, after discovering that the latter was a French cruiser, hove to, and, after being fired into with ball and musketry, returned the fire, it was resistance to search.

A belligerent cruiser encounters a merchant vessel and summons her to stop in order that she may be searched, but the vessel does not stop and tries to avoid the search by flight. The belligerent cruiser may employ force to stop the merchant vessel, and if the latter is damaged or sunk, she has no right to complain, as she failed to comply with an obligation imposed upon her by the law of nations.

Resistance to the legitimate exercise of the right of visit, search, or seizure renders the vessel in all cases liable to confiscation. The cargo is liable to the same treatment as the cargo of an enemy vessel. Merchandise belonging to the captain or to the owners of the ship is regarded as enemy merchandise.

LXXI.

TRANSFER OF FLAG.

Article 55 of the International Naval Conference, London, 1909, states:

"The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences

to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages."

1. Time in Which to Effect Transfer.

There are thus established three periods under which transfer of flag is considered, (1) during war, when burden of proof of the validity of the transfer rests upon the vender; (2) a period of 30 days before the war, during which it is necessary for the captor to prove that the transfer is made to evade the consequences of war; and 3) the period prior to 30 days, when, regardless of whether or not the transfer is made to escape the consequences of war, it is necessary for the captor to establish that the transfer itself is irregular, or not in fact a transfer. It is also necessary that in order to have advantages of these provisions, a vessel transferred within 60 days before the war shall have the papers relating to the sale on board.

2. Valid and Invalid Transfer.

A transfer effected before the outbreak of war is valid if it is absolute, complete, bona fide, and conforms to the legislation of the States interested, and if it has for its effect that neither the control of the ship, nor the profits arising from its use, remain longer in the same hands as before the transfer. If the captor can establish that the above conditions have not been fulfilled, the transfer is presumed to have intervened with the intention to evade the consequences of war, and is null.

LXXII.

CAPTURE.

Articles 37-44 inclusive of the International Naval Conference, London, 1909, state:

1. Vessel Carrying Contraband.

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination. A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

2. Condemnation of Vessels.

Contraband goods are liable to condemnation. A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo. If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings. Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

3. Vessel Unaware of War.

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to above. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband. A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

4. Delivery of Contraband.

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account

of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship. The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped and the master must give the captor duly certified copies of all relevant papers. The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

5. Indemnity.

Prize courts have recognized that in case of unjust seizure of the vessel the owner or the captain is entitled to receive indemnity for the loss, inconvenience, and delay which he has suffered. The captor has a right to demand that the owner of the vessel clearly show that the vessel is innocent. If the papers are irregular, if the vessel is far out of its course and near a blockaded port, she is open to suspicion. The belligerent is justified in taking the vessel to a prize court, but condemnation by the court might not be justified.

LXXIII.

PRIZE COURTS.

According to the present law and practice of nations, the seat of judicial authority of prize-courts is located in the belligerent country, and they are dependent, in a measure, upon the laws and institutions of the particular States by which they are established. In this respect they are *ex parte* tribunals. But the subjects of their adjudication are, without distinction, matters relating to the citizens and property of their own States, of neutrals, and of the belligerent country; and the law itself, by which their decisions should be governed, has no locality, and it is the duty of such a court to determine questions which come before it exactly as it would determine them by sitting in the neutral or belligerent country, the rights of whose citizens are to be adjudicated upon. In theory, therefore, such courts are regarded as international tribunals. But the practice has not at all times corresponded with this theory, and, on this account, it is necessary to rigidly investigate the principles upon which these adjudications are founded, and the reasonings by which they are supported. With this caution in their use, the books of Admiralty reports may become an instructive source of information respecting

the practical rules of international law. It is also necessary to continually bear in mind the distinction between cases decided upon local law and institutions, and those decided upon general principles which should govern the intercourse of independent States. Moreover, in maritime States, a court will feel, though perhaps unconsciously, the influence of a national bias in favour of the captor. (Halleck, *Int. Law*, Vol. I, pp. 62-63.)

International Prize Court Convention.

The International Prize Court Convention was signed at The Hague October 18, 1907, and was animated by the desire to settle in an equitable manner the differences which sometimes arise in the course of a naval war in connection with the decisions of National Prize Courts. If these Courts are to continue to exercise their functions in the manner determined by national legislation, it is desirable that in certain cases an appeal should be provided under conditions conciliating, as far as possible, the public and private interests involved in matters of prize.

LXXIV.

CONVOY.

1. Exemption from Search.

Articles 61 and 62 of the International Naval Congress (February 26, 1909) state:

Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search. If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

The effect of a convoy is to remove the vessel under escort from the belligerent right of visit and search, and the convoying officer

must assume the responsibility for all the vessels under his control. The belligerent war vessel approaching a convoy is entitled to obtain information regarding the vessel under convoy, and the convoying officer must be prepared to furnish all the necessary information. The commander of the belligerent may have reason to believe that the convoying officer has been deceived, and may request investigation. If the convoying officer accedes to investigation, he may inform the commander of the belligerent of the result of his investigation, and if he finds that the vessel which he has escorted in good faith has deceived him, he must withdraw his protection immediately.

2. Neutral Convoy.

“Merchant vessels sailing under military convoy of an allied or neutral power are not subjected to examination, provided the commander of the convoy furnishes a certificate as to the number of vessels being convoyed, their nationality, and the destination of the cargoes, and also as to the fact that there is no contraband of war on the vessels. The stoppage and examination of these vessels is permitted only in the following cases: (1) When the commander of the convoy refuses to give the certificate mentioned; (2) when he declares that one or another vessel does not belong to the number of those sailing under his convoy, and (3) when it becomes evident that a vessel being convoyed is preparing to commit an act constituting a breach of neutrality.” (Russian Regulations on Maritime Prize, March 27, 1895, Art. 6, For. Rel. 1904, 736.)

3. Belligerent Convoy.

“The act of sailing under belligerent or neutral convoy is of itself a violation of neutrality; and the ship and cargo if caught in delicto are justly confiscable; and further, that if resistance be necessary, as in my opinion it is not, to perfect the offence, still that the resistance of the convoy is to all purposes the resistance of the associated fleet. . . . I am unable to perceive any solid foundation on which to rest a distinction between the resistance of a neutral and of an enemy master. . . .

“I can not bring my mind to believe that a neutral can charter an armed enemy ship, and victual and man her with an enemy crew, . . . with the avowed knowledge and necessary intent that she should resist every enemy; that he can take on board hostile shipments of freight, commissions and profits; . . . that he can be

the entire projector and conductor of the voyage, and cooperate in all the plans of the owner to render resistance to search secure and effectual; and that yet, notwithstanding all this conduct, by the law of nations he may shelter his property from confiscation, and claim the privileges of an inoffensive neutral." (Story, J., *The Nereide*, 9 Cranch, 388, 445, 453, 454, dissenting opinion.)

A neutral vessel, though liable to capture without search when sailing under belligerent convoy, is not liable to capture or condemnation for sailing under such convoy after she has, voluntarily or involuntarily, separated from it. (*The Galen*, 1901, 37 Ct. Cl. 89.)

LXXV.

NEUTRALITY.

Neutrals are common friends of belligerents, and are in duty bound to abstain from such acts and conducts as might make them parties to an existing war. The foregoing, however, is subject to a prior treaty of alliance, either of a defensive or of an offensive nature, which may force a nation into the ranks of belligerents, terminating thereby its pacific status.

The history of neutrality is of comparatively recent date, as in ancient times the principles of neutrality were not recognized. A distinction must be made between neutrality on land and that on sea, the latter coming into existence by virtue of the commerce carried on by the Mediterranean cities, which embodied their usages and customs in the code termed *Consolato del Mare*, referred to in the chapter on *The Development of International Law*, exempting the property of friends from confiscation even when found on enemy vessels. Subsequently the Declaration of Paris (1856) established the exemption of neutral goods under the flag of a hostile power with the exception of contraband. The United States has in substance adopted this policy, declaring that enemy property receives no protection from a neutral flag and neutral property assumes no hostile character when transported under a belligerent flag, but in each case the ownership of the property is controlling.

It is a conceded right of neutral states to impose upon belligerent vessels within their jurisdiction certain regulations and rules necessary for the maintenance of the state of neutrality. The restriction imposed upon belligerent vessels, however, does not exclude the right of hospitality in emergency cases, such as to escape the dangers of an attack or of a storm, or to take on supplies sufficient to

insure the return of the vessel to its home port. The presence of a belligerent vessel in a neutral port cannot be utilized to carry on hostile acts or to strengthen its armament or crew.

It is also the duty of a neutral government not to supply one or the other of the belligerents with belligerent vessels, either by an express act of the government or by conniving at this violation of the accepted rules of neutrality. The duties of neutral governments were formulated in this respect in a series of communications passing between the United States and British Governments during the years 1871-1874. The three primary rules emphasized were:

"First. To use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a Power with which it is at peace, and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly. To exercise due diligence in its waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

The development of the laws of neutrality on land is even of more recent date. Its growth dates from the middle of the seventeenth century. The distinguishing feature of neutrality on land as compared with neutrality on sea is the fact that armed bodies of men entering neutral territory are immediately disarmed and interned, and the failure of the exercise of this duty entails the attack of the neutral state by the other belligerent.

The present conception of the rights and duties of a neutral state is clearly defined in the American Neutrality Proclamation, issued under date of August 4, 1914. The proclamation issued by President Woodrow Wilson is a masterly disquisition on the subject of neutrality, and is set forth in *hæc verba*:

1. American Neutrality Proclamation.

Issued Aug. 4, 1914.

By the President of the United States of America—A Proclamation:

Whereas, a state of war unhappily exists between Austria-Hungary and Servia, and between Germany and Russia, and between Germany and France; and whereas the United States is on terms of friendship and amity with the contending powers and with the persons inhabiting their several dominions;

And, whereas, there are citizens of the United States residing within the territories or dominions of each of the said belligerents and carrying on commerce, trade or other business or pursuits therein;

And, whereas, there are subjects of each of the said belligerents residing within the territory or jurisdiction of the United States and carrying on commerce, trade or other business or pursuits therein;

And, whereas, the laws and treaties of the United States, without interfering with the free expression of opinion and sympathy or with the commercial manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest;

And, whereas, it is the duty of a neutral government not to permit or suffer the making of its waters subservient to the purposes of war;

Now, therefore, I, Woodrow Wilson, president of the United States of America, in order to preserve the neutrality of the United States and of its citizens and of persons within its territory and jurisdiction, and to enforce its laws and treaties, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf, and of the law of nations, may thus be prevented from any violation of the same, do hereby declare and proclaim that by certain provisions of the act approved on the 4th day of March, A. D. 1909, commonly known as the penal code of the United States, the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to-wit:

“1. Accepting and exercising a commission to serve either of the said belligerents by land or by sea against the other belligerents.

“2. Enlisting or entering into the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque, or privateer.

“3. Hiring or retaining another person to enlist or enter himself in the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque, or privateer.

“4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

"5. Hiring another person to go beyond the limits of the United States with intent to be entered into service as aforesaid.

"6. Retaining another person to go beyond the limits of the United States with intent to be enlisted as aforesaid.

"7. Retaining another person to go beyond the limits of the United States with intent to be entered into service as aforesaid. (But the said act is not to be construed to extend to a citizen or subject of either belligerent who, being transiently within the United States, shall, on board of any vessel of war, which, at the time of its arrival within the United States, was fitted and equipped as such vessel of war, enlist or enter himself or hire or retain another subject or citizen of the same belligerent, who is transiently within the United States, to enlist or enter himself to serve such belligerent on board such vessel of war, if the United States shall then be at peace with such belligerent.)

"8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of either of the said belligerents.

"9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

"10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting the force of any ship of war, cruiser or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser or armed vessel in the service of either, of the said belligerents, or belonging to the subjects of either by adding to the number of guns of such vessels or by changing those on board of her for guns of a larger caliber, or by the addition thereto of any equipment solely applicable to war.

"11. Beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territories or dominions of either of the said belligerents."

And I do hereby further declare and proclaim that any frequenting and use of the waters within the territorial jurisdiction of the United States by the armed vessels of a belligerent, whether public ships or privateers, for the purpose of preparing for hostile operations, or as posts of observation upon the ships of war or privateers or merchant vessels of a belligerent lying within or being about to enter the jurisdiction of the United States, must be regarded as unfriendly and offensive and in violation of that neutrality which it is the determination of this government to observe.

And to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that from and after the 5th day of August inst., and during the continuance of the present hostilities between Austria-Hungary and Servia, and Germany and Russia, and Germany and France, no ship of war or privateer of any belligerent shall be permitted to make use of any port, harbor, roadstead or waters subject to the jurisdiction of the United States from which a vessel of an opposing belligerent (whether the same shall be a ship of war, a privateer or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last mentioned vessel beyond the jurisdiction of the United States.

If any ship of war or privateer of a belligerent shall, after the time this notification takes effect, enter any port, harbor, roadstead or waters of the United States, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, harbor, roadstead, or waters, except in case of stress of weather or of her requiring provisions, or things necessary for the subsistence of her crew, or for repairs; in any of which cases the authorities of the port or of the nearest port (as the case may be) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use, and no such vessel which may have been permitted to remain within the waters of the United States for the purpose of repair shall continue within such port, harbor, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed, unless within such twenty-four hours a vessel, whether ship of war, privateer, or merchant ship of an opposing belligerent, shall have departed therefrom, in which case the time limit for the departure of such ship of war or privateer shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departures and that of any ship of war, privateer, or merchant ship of an opposing belligerent which may have previously quit the same port, harbor, roadstead or waters.

No ship of war or privateer of a belligerent shall be detained in any port, harbor, roadstead or waters of the United States more than twenty-four hours, by reason of the successive departures from such port, harbor, roadstead or waters of more than one vessel of an opposing belligerent. But if there be several vessels of opposing belligerents in the same port, harbor, roadstead or waters, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the opposing belligerents and to cause the least detention consistent with the objects of this proclamation.

No ship of war or privateer of a belligerent shall be permit-

ted, while in any port, harbor, roadstead or waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew and except so much coal only as may be sufficient to carry such vessel, if without any sail power, to the nearest port of her own country, or, in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive, if dependent upon steam alone, and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead, or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war or privateer shall, since last thus supplied, have entered a port of the government to which she belongs.

And I do further declare and proclaim that the statutes and the treaties of the United States and the law of nations alike require that no person, within the territory and jurisdiction of the United States, shall take part, directly or indirectly, in the said wars, but shall remain at peace with all of the said belligerents, and shall maintain a strict and impartial neutrality.

And I do hereby enjoin all citizens of the United States, and all persons residing or being within the territory or the jurisdiction of the United States, to observe the laws thereof, and to commit no act contrary to the provisions of the said statutes or treaties or in violation of the law of nations in that behalf.

And I do hereby warn all citizens of the United States, and all persons residing or being within the territory or the jurisdiction of the United States, to observe the laws thereof, and to commit no act contrary to the provisions of the said statutes or treaties or in violation of the law of nations in that behalf.

And I hereby warn all citizens of the United States and all persons residing or being within its territory or jurisdiction that, while the free and full expression of sympathies in public and private is not restricted by the laws of the United States, military forces in aid of a belligerent cannot lawfully be originated or organized within its jurisdiction, and that, while all persons may lawfully and without restriction, by reason of the aforesaid state of war, manufacture and sell within the United States arms and munitions of war and other articles ordinarily known as contraband of war, yet they cannot carry such articles on the high seas for the use or services of a belligerent, nor can they transport soldiers and officers of a belligerent or attempt to break any blockade which may be lawfully established and maintained during the said wars without incurring the risk of hostile capture and the penalties denounced by the law of the nations in that behalf.

And I do hereby give notice that all citizens of the United

States and others who may claim the protection of this government who may misconduct themselves in the premises will do so at their peril, and that they can in nowise obtain any protection from the government of the United States against the consequences of their misconduct.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 4th day of August, in the year of our Lord one thousand nine hundred and fourteen and of the independence of the United States of America the one hundred and thirty-eighth.

The proclamation was subsequently extended so as to apply to Great Britain and the other belligerent nations.

2. Comment by Officers Forbidden.

Aug. 6 President Wilson addressed the following letter to the secretaries of war and of the navy:

"I write to suggest that you request and advise all officers of the service, whether active or retired, to refrain from public comment of any kind upon the military or political situation on the other side of the water. I would be obliged if you would let them know that the request and advice comes from me. It seems to me highly unwise and improper that officers of the navy and army of the United States should make any public utterances to which any color of political or military criticism can be given where other nations are involved."

3. Appeal to Americans.

Aug. 18 President Wilson addressed the following appeal to the people of the United States:

"My Fellow Countrymen: I suppose that every thoughtful man in America has asked himself during the last troubled weeks what influence the European war may exert upon the United States, and I take the liberty of addressing a few words to you in order to point out that it is entirely within our own choice what its effects upon us will be and to urge very earnestly upon you the sort of speech and conduct which will best safeguard the nation against distress and disaster.

The effect of the war upon the United States will depend upon what American citizens say or do. Every man who really loves America will act and speak in the true spirit of neutrality, which is the spirit of impartiality and fairness and friendliness to all concerned. The spirit of the nation in this critical matter will be determined largely by what individuals and society and those gathered in public meeting do and say, upon what newspapers and magazines contain, upon what our ministers utter in their pulpits and men proclaim as their opinions on the streets.

The people of the United States are drawn from many nations, and chiefly from the nations now at war. It is natural and inevitable that there should be the utmost variety of sympathy and desire among them with regard to the issues and circumstances of the conflict. Some will wish one nation, others another, to succeed in the momentous struggle. It will be easy to excite passion and difficult to allay it. Those responsible for exciting it will assume a heavy responsibility; responsibility for no less a thing than that the people of the United States, whose love of their country and whose loyalty to its government should unite them as Americans all, bound in honor and affection to think first of her and her interests, may be divided in camps of hostile opinions, hot against each other, involved in the war itself in impulse and opinion, if not in action. Such divisions among us would be fatal to our peace of mind and might seriously stand in the way of the proper performance of our duty as the one great nation at peace, the one people holding itself ready to play a part of impartial mediation and speak the counsels of peace and accommodation, not as a partisan, but as a friend.

I venture, therefore, my fellow countrymen, to speak a solemn word of warning to you against that deepest, most subtle, most essential breach of neutrality which may spring out of partisanship, out of passionately taking sides. The United States must be neutral in fact as well as in name during these days that are to try men's souls. We must be impartial in thought as well as in action, must put a curb upon our sentiments as well as upon every transaction that might be construed as a preference of one party to the struggle before another.

My thought is of America. I am speaking, I feel sure, the earnest wish and purpose of every thoughtful American that this great country of ours, which is, of course, the first in our thoughts and in our hearts, should show herself in this time of peculiar trial a nation fit beyond others to exhibit the fine poise of undisturbed judgment, the dignity of self-control, the efficiency of dispassionate action, a nation that neither sits in judgment upon others nor is disturbed in her own counsels and which keeps herself fit and free to do what is honest and disinterested and truly serviceable for the peace of the world.

Shall we not resolve to put upon ourselves the restraint which will bring to our people the happiness and the great and lasting influence for peace we covet for them?"

4. Angary.

The right of angary is a right exercised by a belligerent to appropriate for hostile purposes property belonging to a neutral country. This right frequently was applied in previous times to some extent, and it is still exercised by taking into possession neutral mer-

chant ships lying in the ports of the belligerent country and using them for the transport of soldiers, ammunitions, or, in general, implements of war.

The right of angary, although seldom practised, has never been disputed and is a recognized prerogative of a belligerent power. In the Franco-Prussian War in 1870, the Prussian Government under the right of angary seized a number of British vessels at the mouth of the Seine and sunk the same for the purpose of blockading the river so as to render egress of gun boats in the river impossible. It is, of course, conceded that any act on the part of a belligerent power which diverts neutral property for its own purposes involves an obligation toward the neutral, and at the conclusion of peace it is customary to grant restitution by way of indemnities. The right of angary is still prevalent with respect to telegraphs, telephones, and rolling stock, and is incorporated in the regulations respecting the laws and customs of war on land, as laid down in the Second Hague Convention of October 18, 1907, as follows:

“Article LIII. An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations. All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.”

“Article LIV. Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.”

LXXVI.

UNNEUTRAL SERVICE.

A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband:

1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed

forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy. 2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy. In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation. These provisions do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel: 1) If she takes a direct part in the hostilities; 2) If she is under the orders or control of an agent placed on board by the enemy Government; 3) If she is in the exclusive employment of the enemy Government; 4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy. In the cases just enumerated, goods belonging to the owner of the vessel are likewise liable to condemnation. Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel. (International Naval Conference 1909, Art. 45-46.)

LXXVII.

HYDROAEROPLANES.

The question whether or not hydroaeroplanes may be considered war vessels is answered in the correspondence between the German ambassador at Washington and the Secretary of State as set out hereinafter:

1. Noncontraband Character.

Imperial German Embassy, Washington, Jan. 19, 1915.

Mr. Secretary of State: It has come to my knowledge that a number of hydroaeroplanes have been ordered in the United States

for belligerent states from the Curtiss plant at Hammondsport, N. Y., and that a part of them has already been delivered.

An airship named America was delivered in October of last year to England and five more hydroaeroplanes of the same type have been delivered since.

England has also ordered twenty-four hydroaeroplanes of the I. N. model (70 horsepower) from Curtiss.

Curtiss is also building for England twelve hydroaeroplanes of the K model of 160 horsepower.

Russia has also recently ordered a number of hydroaeroplanes of the K model from Curtiss. How many is not yet known.

The motors for the aeroplanes are built by Curtiss himself at Hammondsport, partly by the Herschell Spillman Motor factory at North Tonawanda, N. Y.

The wings are made at the Curtiss plant, the minor parts by the Autocrat Manufacturing Co.

The Tonawanda Boat company furnishes the boat part.

There is no doubt that hydroaeroplanes must be regarded as war vessels whose delivery to belligerent states by neutrals should be stopped under article 8 of the thirteenth convention of the second Hague conference of Oct. 18, 1907. Hydroaeroplanes are not mentioned by name in the convention simply because there was none in 1907 at the time of the conference.

On the supposition that hydroaeroplanes are delivered to belligerents against the wishes of the government of the United States. I have the honor to bring the foregoing to your excellency's kind knowledge.

Accept, etc.,

J. BERNSTORFF.

THE SECRETARY OF STATE TO THE GERMAN AMBASSADOR.

Department of State, Washington, Jan. 29, 1915.

Exccllency: I have the honor to acknowledge the receipt of your excellency's note of the 19th instant, and in reply have to inform you that the statements contained in your excellency's note have received my careful consideration in view of the earnest purpose of this government to perform every duty which is imposed upon it as a neutral by treaty stipulation and international law.

2. Hydroaeroplanes are Not War Vessels.

The essential statement in your note, which implies an obligation on the part of this government to interfere in the sale and delivery of hydroaeroplanes to belligerent powers, is:

“There is no doubt that hydroaeroplanes must be regarded as war vessels whose delivery to belligerent states by neutrals should be stopped under article 8 of the thirteenth convention of the second Hague conference of Oct. 18, 1907.”

As to this assertion of the character of hydroaeroplanes I submit the following comments: The fact that a hydroaeroplane is fitted with apparatus to rise from and alight upon the sea does not in my opinion give it the character of a vessel any more than the wheels attached to an aeroplane fitting it to rise from and alight upon land give the latter the character of a land vehicle. Both the hydroaeroplanes and the aeroplane are essentially air craft; as an aid in military operations they can only be used in the air; the fact that one starts its flight from the surface of the sea and the other from the land is a mere incident which in no way affects their aerial character.

In view of these facts I must dissent from your excellency's assertion that “there is no doubt that hydroaeroplanes must be regarded as war vessels,” and consequently I do not regard the obligations imposed by treaty or by the accepted rules of international law applicable to air craft of any sort.

In this connection I further call to your excellency's attention that according to the latest advices received by this department the German imperial government include “balloons and flying machines and their component parts” in the list of conditional contraband, and that in the imperial prize ordinance, drafted Sept. 30, 1909, and issued in the Reichsgesetzblatt on Aug. 3 1914, appear as conditional contraband “airships and flying machines” (article 23, section 8). It thus appears that the imperial government have placed and still retain air craft of all descriptions in the class of conditional contraband, for which no special treatment involving neutral duty is, so far as I am advised, provided by any treaty to which the United States is a signatory or adhering power.

As in the views of this department the provisions of convention 13 of the second Hague conference do not apply to hydroaeroplanes I do not consider it necessary to discuss the question as to whether those provisions are in force during the present war.

Accept, etc.,

W. J. BRYAN.

LXXVIII.

LANDING OF SUBMARINE CABLES.

In 1869 a concession was granted by the French Government to a company which proposed to lay a cable from the shores of France to the United States. One of the provisions of this concession gave to the company for a long period the exclusive right of telegraphic communication by submarine cable between France and the United States. President Grant resisted the landing of the cable unless this offensive monopoly feature should be abandoned. The French company accordingly renounced the exclusive privilege, and the President's objection was withdrawn. The cable was laid in July, 1869; it ran from Brest, France, to St. Pierre, a French island off the southern coast of Newfoundland, thence to Duxbury, Mass., and was known as the "First French Cable." It soon passed, however, into the control of the Anglo-American Company, controlling the cables connecting Great Britain with this continent. (Senate Doc. No. 122, pp. 63, 71.)

1. Cables Under Control of Government.

In a note respecting this cable, dated July 10, 1869 and addressed to the French and British ministers, Mr. Fish said: "It is not doubted by this Government that the complete control of the whole subject, both of the permission and the regulation of this mode of foreign intercourse, is with the Government of the United States, and that, however suitable certain legislation on the part of a State of the Union may become, in respect to its proprietary rights, in aid of such enterprise, the entire question of the allowance or prohibition of such means of foreign intercourse, commercial and political, and of the terms and conditions and its allowance, is under the control of the Government of the United States." (See. Doc. No. 122, p. 65.)

In his annual message of December, 1875, President Grant recounts his action respecting the French cable of 1869, and says: "The right to control the conditions for the laying of a cable within the jurisdictional waters of the United States, to connect our shores with those of any foreign state, pertains exclusively to the Government of the United States, under such limitations and conditions as Congress may impose. In the absence of legislation by Congress, I was unwilling, on the one hand, to yield to a foreign state the right to say that its grantees might land on our shores while it denied

a similar right to our people to land on its shore; and, on the other hand, I was reluctant to deny to the great interests of the world and of civilization the facilities of such communication as were proposed. I therefore withheld any resistance to the landing of the cable, on condition that the offensive monopoly feature of the concession be abandoned, and that the right of any cable which may be established by authority of this Government to land upon French territory and to connect with French land lines, and enjoy all the necessary facilities or privileges incident to the use thereof upon as favorable terms as any other company, be conceded." (Senate Doc. No. 122, p. 70.)

2. Conditions Affecting the Laying of Cables.

On October 18, 1889, the *Compagnie Francaise du Télégraphe de Paris a New York* applied for permission to lay a cable from San Domingo to the United States; to this request, Mr. Blain replied on December 21, 1889, as follows: "While the authority of the President to grant the permission you desire must be accepted subject, of course, to the future ratification by Congress, yet there are certain conditions which he regards as absolutely essential before such provisional permission can be accorded." These conditions are as follows:

(1) That neither the company, its successors or assigns, nor any cable with which it connects, shall receive from any foreign government exclusive privileges which would prevent the establishment and operation of a cable of an American company in the jurisdiction of such foreign government. (2) That the company shall not consolidate or amalgamate with any other line or combine therewith for the purpose of regulating rates. (3) That the charges to the Government of the United States shall not be greater than those to any other government, and the general charges shall be reasonable. (4) That the Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, or agreement be granted to any other government. (5) That a citizen of the United States shall stand on the same footing as regards privileges with citizens of San Domingo. (6) That messages shall have precedence in the following order: (a) Government messages and official messages to the Government; (b) telegraphic business; (c) general business. (7) That the line shall be kept open for daily business, and all messages, in the above order, be transmitted according to the time of receipt.

3. Protection of Submarine Cables.

A Convention for Protection of Submarine Cables was concluded in 1884, by all the principal countries. It consists of seventeen articles which, in substance, provide the following: (Article I.) The protection applies to all legally established submarine cables. (Article II.) The breaking or injury of submarine cables shall be a punishable offense, if done wilfully or through negligence. (Article III.) Cables should be placed upon suitable conditions of safety, as far as possible. (Article IV.) If by laying or repairing a cable, the owner injures another cable, he shall be responsible for the damage. (Article V.) Vessels engaged in laying or repairing submarine cables must observe the rules concerning signals that have been or shall be adopted by common consent, by the High Contracting Parties, with a view to preventing collisions at sea. When a vessel engaged in repairing a cable carries the said signals, other vessels that see or are able to see those signals shall withdraw or keep at a distance of at least one nautical mile from such vessel, in order not to interfere with its operations. Fishing gear and nets shall be kept at the same distance. Nevertheless, a period of twenty-four hours shall be allowed to fishing vessels that perceive or are able to perceive a telegraph ship carrying the said signals, in order that they may be enabled to obey the notice thus given, and no obstacle shall be placed in the way of their operations during such period. The operations of telegraph ships shall be finished as speedily as possible. (Article VI.) Vessels that see or are able to see buoys designed to show the position of cables when the latter are being laid, are out of order, or are broken, shall keep at a distance of one quarter of a nautical mile at least from such buoys. Fishing nets and gear shall be kept at the same distance. (Article VII.) Owners of ships who can prove sacrifice of an anchor, a net, or any other finishing implement, in order to avoid injuring a cable, shall be indemnified by its owner. The owner of the ship should prepare whenever possible, immediately after the accident, a suitable testimony with his crew as witnesses and should make his report as soon as possible. (Article VIII.) The courts competent to take cognizance of infractions of this convention shall be those of the country to which the guilty vessel belongs.

4. Cutting of Cables.

During the war with Spain, officers of the United States cut submarine cables owned by neutrals, as a military necessity. Under

the provision of Article XV, that "It is understood that the stipulations of this Convention shall in no wise affect the liberty of action of belligerents" this action was warranted.

In order to avoid any misinterpretation of this Article XV of the Convention, Lord Lyons, acting for the British Government, issued the following statement: "Her Majesty's Government understands Article XV in this sense, that, in time of war, a belligerent, a signatory of the convention, shall be free to act in regard to submarine cables as if the convention did not exist." (Submarine Telegraphic Cables in their International Relations, by George Grafton Wilson, Naval War College, Aug. 1901, 13.)

LXXIX.

AUTOMATIC SUBMARINE CONTACT MINES, AND TORPEDOES.

The first five articles of The Hague Convention concluded in 1907 regarding the laying of contact mines read as follows:

"Article I. It is forbidden: 1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them; 2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings; 3. To use torpedoes which do not become harmless when they have missed their mark.

"Article II. It is forbidden to lay automatic contact mines off the coast and ports of the enemy, with the sole object of intercepting commercial shipping.

"Article III. When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping. The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to ship owners, which must also be communicated to the Governments through the diplomatic channel.

"Article IV. Neutral Powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents. The neutral Power

must inform ship-owners, by a notice issued in advance, where automatic contact mines have been laid. This notice must be communicated at once to the Governments through the diplomatic channel.

“Article V. At the close of the war, the Contracting Powers undertake to do their utmost to remove the mines which they had laid, each Power removing its own mines. As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the Power which laid them, and each Power must proceed with the least possible delay to remove the mines in its own waters.”

LXXX.

SUBMARINES.

The outbreak of the World War in 1914 has brought to the forefront an engine of war which prior thereto was relegated to the rank of an experimental device of destruction. Although the submarine had been recognized as a possible means of unobservedly reaching a position immune from the attack of besieging men-of-war, its radius of operation and general construction were not brought to that degree of perfection in which it could be employed as a reliable engine of war.

Soon after the world conflagration in August, 1914, Germany introduced the submarine campaign, which has played a conspicuous part not only as to its effectiveness, but also, in a diplomatic sense, by the manner in which the submarine is employed. Due to the modern improvements installed by Germany, the submarine, as a fighting engine, became almost equal, in length as well as in armament, to the regular marine cruiser. The exploits of the submarine “Deutschland,” which crossed the ocean several times, established that the radius of action of submarines has increased beyond the most sanguine expectations of technicians.

The employment of submarines was mainly directed as a retaliatory measure against the rules and actions of Great Britain to prevent any commerce being carried on between neutral countries and Germany. A blockade had been installed against Germany, which was effectively maintained and shut her out of the world's market except as to her intercourse with neighboring neutral countries. Germany, in retaliation, declared a war zone, or what is known as a “paper” blockade, against England and her allies.

The controversies which have arisen between Germany and the United States as to the gross violations of the neutral trade effected by the ruthless employment of the submarine warfare, are contained in a series of diplomatic notes and conferences which, in part, are reproduced in the following as far as the salient features of laws expressed therein are concerned, so that the student may have a clear understanding by what laws submarine warfare is governed.

1. Restraint on Commerce.

In a Proclamation issued by the Chief of the Admiral Staff of the German Navy under date of February 4, 1915, a war zone was decreed in the waters surrounding Great Britain and Ireland under the following terms:

1. The waters surrounding Great Britain and Ireland, including the whole English channel, are hereby declared to be war zone. On and after the 18th of February, 1915, every enemy merchant ship found in the said war zone will be destroyed without its being always possible to avert the dangers threatening the crews and passengers on that account.

2. Even neutral ships are exposed to danger in the war zone, as in view of the misuse of neutral flags ordered on January 31 by the British government and of the accidents of naval war, it cannot always be avoided to strike even neutral ships in attacks that are directed at enemy ships.

3. Northward navigation around the Shetland islands in the eastern waters of the North sea and in a strip of not less than thirty miles width along the Netherlands coast is in no danger.

Berlin, Feb. 4, 1915.

VON POHL,

Chief of the Admiral Staff of the Navy.

To this a memorial was attached, explaining the reasons which prompted the German Government to undertake such a step, and emphasizing inter alia that "In addition, they (the British Government) have, in fact, obliterated the distinction between absolute and conditional contraband by confiscating all articles of conditional contraband destined for Germany, whatever may be the port where these articles are to be unloaded, and without regard to whether they are destined for uses of war or peace. They have not even hesitated to violate the declaration of Paris, since their naval forces have captured, on neutral ships, German property which was not contraband of war. Furthermore, they have gone further than their

own orders respecting the declaration of London and caused numerous German subjects capable of bearing arms to be taken from neutral ships and made prisoners of war. Finally, they have declared the North sea in its whole extent to be the seat of war, thereby rendering difficult and extremely dangerous, if not impossible, all navigation on the high seas between Scotland and Norway, so that they have in a way established a blockade of neutral coasts and ports, which is contrary to the elementary principles of generally accepted international law. Clearly all these measures are part of a plan to strike not only the German military operations but also the economic system of Germany, and in the end to deliver the whole German people to reduction by famine by intercepting legitimate neutral commerce by methods contrary to international law."

The German Government concludes its note by a general warning to neutral powers in the following manner:

"Neutral powers are accordingly forewarned not to continue to intrust their crews, passengers or merchandise to such vessels. Their attention is furthermore called to the fact that it is of urgency to recommend to their own vessels to steer clear of these waters. It is true that the German navy has received instructions to abstain from all violence against neutral vessels recognizable as such; but in view of the hazards of war and of the misuse of the neutral flag ordered by the British government, it will not always be possible to prevent a neutral vessel from becoming the victim of an attack intended to be directed against a vessel of the enemy. It is expressly declared that navigation in the waters north of the Shetland Islands is outside the danger zone, as well as navigation in the eastern part of the North sea and in a zone thirty miles wide along the Dutch coast."

This communication elicited a reply from the United States Government in the note addressed by Secretary of State Bryan under date of February 10, 1915, and forwarded to the United States Ambassador, James W. Gerard, at Berlin. In pointing out the grave possibilities which would follow the wake of such a course, the rules of international marine law, as adopted and recognized by civilized nations, are laid down in the following terms:

"It is of course not necessary to remind the German government that the sole right of a belligerent in dealing with neutral vessels on the high seas is limited to visit and search, unless a blockade is proclaimed and effectively maintained, which this government does not understand to be proposed in this case. To declare or exercise a right to attack and destroy any vessel entering a prescribed area of the high seas without first certainly

determining its belligerent nationality and the contraband character of its cargo would be an act so unprecedented in naval warfare that this government is reluctant to believe that the imperial government of Germany in this case contemplates it as possible. The suspicion that enemy ships are using neutral flags improperly can create no just presumption that all ships traversing a prescribed area are subject to the same suspicion. It is to determine exactly such questions that this government understands the right of visit and search to have been recognized."

This being the law of nations, a mere supposition on the part of submarine commanders is not sufficient to justify any act jeopardizing the lives of neutral citizens as set forth in the following:

"If the commanders of German vessels of war should act upon the presumption that the flag of the United States was not being used in good faith and should destroy on the high seas an American vessel or the lives of American citizens, it would be difficult for the government of the United States to view the act in any other light than as an indefensible violation of neutral rights which it would be very hard indeed to reconcile with the friendly relations now so happily subsisting between the two governments."

2. U. S. Proposal for the Conduct of Submarine Warfare.

The Department of State at Washington finally adopted under date of February 20, 1915, a series of proposals which were submitted to the governments of Great Britain and Germany, and which set forth certain rules to be observed in the prosecution of the war:

Germany and Great Britain to agree:

1. That neither will sow any floating mines, whether upon the high seas or in territorial waters; that neither will plant on the high seas anchored mines except within cannon range of harbors for defensive purposes only, and that all mines shall bear the stamp of the government planting them and be so constructed as to become harmless if separated from their moorings.

2. That neither will use submarines to attack merchant vessels of any nationality except to enforce the right of visit and search.

3. That each will require their respective merchant vessels not to use neutral flags for the purpose of disguise or ruse de guerre.

Germany to agree:

That all importations of food or foodstuffs from the United States (and from such other neutral countries as may ask it)

into Germany shall be consigned to agencies to be designated by the United States government; that these American agencies shall have entire charge and control without interference on the part of the German government of the receipt and distribution of such importations, and shall distribute them solely to retail dealers bearing licenses from the German government entitling them to receive and furnish such food and foodstuffs to non-combatants only; that any violation of the terms of the retailers' licenses shall work a forfeiture of their rights to receive such food and foodstuffs for this purpose, and that such food and foodstuffs will not be requisitioned by the German government for any purpose whatsoever or be diverted to the use of the armed forces of Germany.

Great Britain to agree:

That food and foodstuffs will not be placed upon the absolute contraband list and that shipments of such commodities will not be interfered with or detained by British authorities if consigned to agencies designated by the United States government in Germany for the receipt and distribution of such cargoes to licensed German retailers for distribution solely to the non-combatant population.

In submitting this proposed basis of agreement this government does not wish to be understood as admitting or denying any belligerent or neutral right established by the principles of international law, but would consider the agreement, if acceptable to the interested powers, a *modus vivendi* based upon expediency rather than legal right and as not binding upon the United States either in its present form or in a modified form until accepted by this government.

3. Reply of the British Government.

The British Government pointed out that, inasmuch as an effective blockade was effected, the position assumed by the British Government was not reprehensible, in view of the absence of the sacrifice of human lives.

"The British fleet has instituted a blockade, effectively controlling by cruiser 'cordon' all passage to and from Germany by sea. The difference between the two policies is, however, that while our object is the same as that of Germany, we propose to attain it without sacrificing neutral ships or non-combatant lives or inflicting upon neutrals the damage that must be entailed when a vessel and its cargo are sunk without notice, examination or trial. I must emphasize again that this measure is a natural and necessary consequence of the unprecedented methods, repugnant to all law and morality, which have been described above, which Germany began to adopt at the very outset of the war, and the effects of which have been constantly accumulating."

Subsequently thereto an order in council was communicated to the American Ambassador at London elucidating the steps to be taken to restrict the commerce of Germany.

4. Reply of the U. S. Department of State, March 30, 1915.

A note was despatched to the British Government contesting that an effective blockade was not maintained in view of the fact that the Scandinavian and Danish ports were open to American trade.

"The government of the United States assumes with the greater confidence that his majesty's government will thus adjust their practice to the recognized rules of international law, because it is manifest that the British government have adopted an extraordinary method of 'stopping cargoes destined for or coming from the enemy's territory,' which, owing to the existence of unusual conditions in modern warfare at sea, it will be difficult to restrict to the limits which have been heretofore required by the law of nations. Though the area of operations is confined to 'European waters, including the Mediterranean,' so great an area of the high seas is covered and the cordon of ships is so distant from the territory affected that neutral vessels must necessarily pass through the blockading force in order to reach important neutral ports which Great Britain as a belligerent has not the legal right to blockade, and which, therefore, it is presumed she has no intention of claiming to blockade. The Scandinavian and Danish ports, for example, are open to American trade. They are also free, so far as the actual enforcement of the order in council is concerned, to carry on trade with German Baltic ports, although it is an essential element of blockade that it bear with equal severity upon all neutrals."

5. Reply of the British Government, July 24, 1915.

The opinion entertained by the British Government is expressed in a note pointing out the precedent set by the United States in the Civil War.

"7. It may be noted in this connection that at the time of the civil war the United States found themselves under the necessity of declaring a blockade of some 3,000 miles of coast line, a military operation for which the number of vessels available was at first very small. It was vital to the cause of the United States in that great struggle that they should be able to cut off the trade of the southern states. The confederate armies were dependent on supplies from over seas, and those supplies could not be obtained without exporting the cotton wherewith to pay for them. To cut off this trade the United States could only rely upon a blockade. The difficulties con-

fronting the federal government were in part due to the fact that neighboring neutral territory afforded convenient centers from which contraband could be introduced into the territory of their enemies and from which blockade running could be facilitated. Your excellency will no doubt remember how, in order to meet this new difficulty, the old principles relating to contraband and blockade were developed and the doctrine of continuous voyage was applied and enforced under which goods destined for the enemy territory were intercepted before they reached the neutral ports from which they were to be re-exported."

The German Ambassador, after the sinking of the *Lusitania*, informed the Secretary of State of the rules which henceforth were to guide the treatment of liners by the submarines, to-wit:

"Liners will not be sunk by our submarines without warning and without safety to the lives of noncombatants, provided that the liners do not try to escape or offer resistance.

"Although I know that you do not wish to discuss the *Lusitania* question till the Arabic incident has been definitely and satisfactorily settled, I desire to inform you of the above because this policy of my government was decided on before the Arabic incident occurred."

LXXXI.

SUBMARINES AND ARMED MERCHANTMEN.

The attention of the Department of State was directed to an incident occurring on the 25th of August, 1915, according to which an English merchant vessel fired on a German submarine in the Irish Sea without a challenge of any kind. Three days later an English passenger steamer fired on a German submarine in Bristol Channel after having been summoned to stop. The conclusion was drawn that British merchant vessels attacking German submarines are subject to destruction irrespective of the presence of neutral citizens. These incidents led to the issuance of a memorandum by the German Government, pointing out that the submarines had orders to conduct cruiser warfare against enemy merchant vessels, in accordance with general principles of international law.

The United States Department of State in a letter to the British Ambassador dated January 18, 1916, laid down the general rules of international law affecting submarine warfare:

1. A non-combatant has a right to traverse the high seas in a merchant vessel entitled to fly a belligerent flag and to

rely upon the observance of the rules of international law and principles of humanity if the vessel is approached by a naval vessel of another belligerent.

2. A merchant vessel of enemy nationality should not be attacked without being ordered to stop.

3. An enemy merchant vessel, when ordered to do so by a belligerent submarine, should immediately stop.

4. Such vessel should not be attacked after being ordered to stop unless it attempts to flee or to resist, and in case it ceases to flee or resist the attack should discontinue.

5. In the event that it is impossible to place a prize crew on board of an enemy merchant vessel or convoy it into port, the vessel may be sunk, provided the crew and passengers have been removed to a place of safety.

In complying with the foregoing propositions, which, in my opinion, embody the principal rules the strict observance of which will insure the life of a non-combatant on a merchant vessel which is intercepted by a submarine, I am not unmindful of the obstacles which would be met by undersea craft as commerce destroyers.

Prior to the year 1915 belligerent operations against enemy commerce on the high seas had been conducted with cruisers carrying heavy armaments. Under these conditions international law appeared to permit a merchant vessel to carry an armament for defensive purposes without losing its character as a private commercial vessel. This right seems to have been predicated on the superior defensive strength of ships of war, and the limitation of armament to have been dependent on the fact that it could not be used effectively in offense against enemy naval vessels, while it could defend the merchantmen against the generally inferior armament of piratical ships and privateers.

1. Submarines as Affecting Armament of Merchantmen.

The use of the submarine, however, has changed these relations. Comparison of the defensive strength of a cruiser and a submarine shows that the latter, relying for protection on its power to submerge, is almost defenseless in point of construction. Even a merchant ship carrying a small caliber gun would be able to use it effectively for offense against a submarine. Moreover, pirates and sea rovers have been swept from the main trade channels of the seas, and privateering has been abolished. Consequently, the placing of guns on merchantmen, at the present day of submarine warfare, can be explained only on the ground of a purpose to render merchantmen superior in force to submarines and to prevent warning and visit and search by them. Any armament, therefore, on a merchant vessel would seem to have the character of an offensive armament.

2. Duties Imposed Upon Submarines.

If a submarine is required to stop and search a merchant vessel on the high seas and, in case it is found that she is of enemy character and that conditions necessitate her destruction, to remove to a place of safety all persons on board, it would not seem just or reasonable that the submarine should be compelled, while complying with these requirements, to expose itself to almost certain destruction by the guns on board the merchant vessel.

It would therefore appear to be a reasonable and reciprocally just arrangement if it could be agreed by the opposing belligerents that submarines should be caused to adhere strictly to the rules of international law in the matter of stopping and searching merchant vessels, determining their belligerent nationality, and removing the crews and passengers to places of safety before sinking the vessels as prizes of war, and that merchant vessels of belligerent nationality should be prohibited and prevented from carrying any armament whatsoever.

In presenting this formula as a basis for conditional declarations by the belligerent governments, I do so in the full conviction that your government will consider primarily the humane purpose of saving the lives of innocent people rather than the insistence upon a doubtful legal right which may be denied on account of new conditions.

A memorandum was issued by the Imperial German Government under date of February 10, 1916, relating to the treatment of armed merchantmen in view of the fact that British merchantmen were generally armed.

Even before the outbreak of the present war the British government had given English shipping companies the opportunity to arm their merchant vessels with guns. On March 26, 1913, Winston Churchill, then first lord of the admiralty, made the declaration in the British parliament that the admiralty had called upon the shipowners to arm a number of first-class liners for protection against danger menaced in certain cases by fast auxiliary cruisers of other powers; the liners were not, however, to assume the character of auxiliary cruisers themselves. The government desired to place at the disposal of the shipowners the necessary guns, sufficient ammunition and suitable personnel for the training of the gun crews.

3. Laws Relating to Status of Armed Merchant Vessels.

The Department of State at Washington, in a memorandum dated March 25, 1916, laid down the law relating to the status of an armed merchant vessel, which is a masterful disquisition on the subject and is reproduced in *hæc verba*:

I.

The status of an armed merchant vessel of a belligerent is to be considered from two points of view: First, from that of a neutral when the vessel enters its ports; and, second, from that of an enemy when the vessel is on the high seas.

First—An Armed Merchant Vessel in Neutral Ports.

1. It is necessary for a neutral government to determine the status of an armed merchant vessel of belligerent nationality which enters its jurisdiction, in order that the government may protect itself from responsibility for the destruction of life and property by permitting its ports to be used as bases of hostile operations by belligerent warships.

2. If the vessel carries a commission or orders issued by a belligerent government and directing it under penalty to conduct aggressive operations, or if it is conclusively shown to have conducted such operations, it should be regarded and treated as a warship.

3. If sufficient evidence is wanting, a neutral government, in order to safeguard itself from liability for failure to preserve its neutrality, may reasonably presume from the facts the status of an armed merchant vessel which frequents its waters. There is no settled rule of international law as to the sufficiency of evidence to establish such a presumption. As a result a neutral government must decide for itself the sufficiency of the evidence which it requires to determine the character of the vessel. For the guidance of its port officers and other officials a neutral government may therefore declare a standard of evidence, but such standard may be changed on account of the general conditions of naval warfare or modified on account of the circumstances of a particular case. These changes and modifications may be made at any time during the progress of the war, since the determination of the status of an armed merchant vessel in neutral waters may affect the liability of a neutral government.

Second—An Armed Merchant Vessel on the High Seas.

1. It is necessary for a belligerent warship to determine the status of an armed merchant vessel of an enemy encountered on the high seas, since the rights of life and property of belligerents and neutrals on board the vessel may be impaired if its status is that of an enemy warship.

2. The determination of warlike character must rest in no case upon presumption but upon conclusive evidence, because the responsibility for the destruction of life and property depends on the actual facts of the case and cannot be avoided or lessened by a standard of evidence which a belligerent may announce as creating a resumption of hostile character. On

the other hand, to safeguard himself from possible liability for unwarranted destruction of life and property the belligerent should, in the absence of conclusive evidence, act on the presumption that an armed merchantman is of peaceful character.

3. A presumption based solely on the presence of an armament on a merchant vessel of an enemy is not a sufficient reason for a belligerent to declare it to be a warship and proceed to attack it without regard to the rights of the persons on board. Conclusive evidence of a purpose to use the armament for aggression is essential. Consequently an armament which a neutral government, seeking to perform its neutral duties, may presume to be intended for aggression, might in fact on the high seas be used solely for protection. A neutral government has no opportunity to determine the purpose of an armament on a merchant vessel unless there is evidence in the ship's papers or other proof as to its previous use, so that the government is justified in substituting an arbitrary rule of presumption in arriving at the status of the merchant vessel. On the other hand, a belligerent warship can on the high seas test by actual experience, the purpose of an armament on an enemy merchant vessel, and so determine by direct evidence the status of the vessel.

The status of an armed merchant vessel as a warship in neutral waters may be determined, in the absence of documentary proof or conclusive evidence of previous aggressive conduct, by presumption derived from all the circumstances of the case.

The status of such vessel as a warship on the high seas must be determined only upon conclusive evidence of aggressive purpose, in the absence of which it is to be presumed that the vessel has a private and peaceable character, and it should be so treated by an enemy warship.

In brief, a neutral government may proceed upon the presumption that an armed merchant vessel of belligerent nationality is armed for aggression, while a belligerent should proceed on the presumption that the vessel is armed for protection. Both of these presumptions may be overcome by evidence—the first by secondary or collateral evidence, since the fact to be established is negative in character; the second by primary and direct evidence, since the fact to be established is positive in character.

II.

4. Relations of Belligerents and Neutrals as Affected by Status of Armed Merchant Vessels.

The character of the evidence upon which the status of an armed merchant vessel of belligerent nationality is to be determined when visiting neutral waters and when traversing

the high seas having been stated, it is important to consider the rights and duties of neutrals and belligerents as affected by the status of armed merchant vessels in neutral ports and on the high seas.

First—The Relations of Belligerents and Neutrals as Affected by the Status of Armed Merchant Vessels in Neutral Ports.

1. It appears to be the established rule of international law that warships of a belligerent may enter neutral ports and accept limited hospitality there upon conditions that they leave, as a rule, within twenty-four hours after their arrival.

2. Belligerent warships are also entitled to take on fuel once in three months in ports of a neutral country.

3. As a mode of enforcing these rules a neutral has the right to cause belligerent warships failing to comply with them, together with their officers and crews, to be interned during the remainder of the war.

4. Merchantmen of belligerent nationality armed only for purposes of protection against the enemy are entitled to enter and leave neutral ports without hindrance in the course of legitimate trade.

5. Armed merchantmen of belligerent nationality under a commission or orders of their government to use, under penalty, their armament for aggressive purposes, or merchantmen which, without such commission or orders, have used their armaments for aggressive purposes, are not entitled to the same hospitality in neutral ports as peaceable armed merchantmen.

Second—The Relations of Belligerents and Neutrals as Affected by the Status of Armed Merchant Vessels on the High Seas.

1. Innocent neutral property on the high seas cannot legally be confiscated, but is subject to inspection by a belligerent. Resistance to inspection removes this immunity and subjects the property to condemnation by a prize court, which is charged with the preservation of the legal rights of the owners of neutral property.

2. Neutral property engaged in contraband trade, breach of blockade, or unneutral service obtains the character of enemy property and is subject to seizure by a belligerent and condemnation by a prize court.

3. When hostile and innocent property is mixed, as in the case of a neutral ship carrying a cargo which is entirely or partly contraband, this fact can only be determined by inspection. Such innocent property may be of uncertain character, as it has been frequently held that it is more or less contaminated by association with hostile property. For example, under the declaration of London (which, so far as the provisions covering this subject are concerned, has been adopted

by all the belligerents), the presence of a cargo which in bulk or value consists of 50 per cent contraband articles impress the ship with enemy character and subjects it to seizure and condemnation by a prize court.

4. Enemy property, including ships and cargoes, is always subject to seizure and condemnation. Any enemy property taken by a belligerent on the high seas is a total loss to the owners. There is no redress in a prize court. The only means of avoiding loss is by flight or successful resistance. Enemy merchant ships have, therefore, the right to arm for the purpose of self-protection.

5. A belligerent warship is any vessel which, under commission or orders of its government imposing penalties or entitling it to prize money, is armed for the purpose of seeking and capturing or destroying enemy property or hostile neutral property on the seas. The size of the vessel, strength of armament, and its defensive or offensive force are immaterial.

6. A belligerent warship has, incidental to the right of seizure, the right to visit and search all vessels on the high seas for the purpose of determining the hostile or innocent character of the vessels and their cargoes. If the hostile character of the property is known, however, the belligerent warship may seize the property without exercising the right of visit and search which is solely for the purpose of obtaining knowledge as to the character of the property. The attacking vessel must display its colors before exercising belligerent rights.

7. When a belligerent warship meets a merchantman on the high seas which is known to be enemy owned and attempts to capture the vessel, the latter may exercise its right to self-protection either by flight or by resistance. The right to capture and the right to prevent capture are recognized as equally justifiable.

8. The exercise of the right to capture is limited, nevertheless, by certain accepted rules of conduct based on the principles of humanity and regard for innocent property, even if there is definite knowledge that some of the property, cargo as well as the vessel, is of enemy character. As a consequence of these limitations, it has become the established practice for warships to give merchant vessels an opportunity to surrender or submit to visit and search before attempting to seize them by force. The observance of this rule of naval warfare tends to prevent the loss of life of non-combatants and the destruction of innocent neutral property which would result from sudden attack.

9. If, however, before a summons to surrender is given, a merchantman of belligerent nationality, aware of the approach of an enemy warship, uses its armament to keep the enemy at a distance, or after it has been summoned to surrender it resists

or flees, the warship may properly exercise force to compel surrender.

10. If the merchantman finally surrenders, the belligerent warship may release it or take it into custody. In the case of an enemy merchantman it may be sunk, but only if it is impossible to take it into port, and provided always that the persons on board are put in a place of safety. In the case of a neutral merchantman the right to sink it in any circumstance is doubtful.

11. A merchantman entitled to exercise the right of self-protection may do so when certain of attack by an enemy warship, otherwise the exercise of the right would be so restricted as to render it ineffectual. There is a distinct difference, however, between the exercise of the right of self-protection and the act of cruising the seas in an armed vessel for the purpose of attacking enemy naval vessels.

12. In the event that merchant ships of belligerent nationality are armed and under commission or orders to attack in all circumstances certain classes of enemy naval vessels for the purpose of destroying them, and are entitled to receive prize money for such service from their government or are liable to a penalty for failure to obey the orders given, such merchant ships lose their status of peaceable merchant ships and are to a limited extent incorporated in the naval forces of their government, even though it is not their sole occupation to conduct hostile operations.

13. A vessel engaged intermittently in commerce and under a commission or orders of its government imposing a penalty in pursuing and attacking enemy naval craft, possesses a status tainted with a hostile purpose which it cannot throw aside or assume at will. It should, therefore, be considered as an armed public vessel and receive the treatment of a warship by an enemy and by neutrals. Any person taking passage on such a vessel cannot expect immunity other than that accorded persons who are on board a warship. A private vessel, engaged in seeking enemy naval craft, without such a commission or orders from its government, stands in a relation to the enemy similar to that of a civilian who fires upon the organized military forces of a belligerent, and is entitled to no more considerate treatment.

The events following the various controversies between the United States and German Governments are matters of historical importance and must be discussed in books pertaining to that branch of investigation. It may be stated, however, that the controversy finally culminated in a resolution adopted by Congress April 6, 1917, declaring the existence of a state of war between the United States of America and the Imperial German Government.

Various reports obtained during the prosecution of the war have conclusively established that England and the United States of America have not lagged in the development and perfection of the submarine as an engine of war. There are several incidents testifying to the heroic exploits of British submarines, and it is assumed that the employment of the submarine as practised by the German Government was not adopted by the allied nations in view of the dangers to neutral commerce and the impossibility of effectively employing the submarine without violating the acknowledged principles of international law.

LXXXII.

AERIAL WARFARE.

As a further adjunct of supporting belligerent action, aeroplanes, and captive and free balloons have come, within recent years, into such extensive use and have received such intensive attention on the part of engineers and inventors that it may be confidently stated that the future and possibility of development of this craft is merely in a state of infancy.

The great factor which has exercised a far-reaching control in deciding the extent of use to which this craft can be put is the fact that the propulsion and navigation of these "implements of war" are made independent of existing or non-existing air currents, and have been subjected to a positive control which has brought about the adoption of aerial craft by all of the nations. The dirigibility of the balloon has quickened its employment for all purposes, and in more recent times the use of dirigible aircraft (the aeroplane) will have a field of usefulness in times of peace for accelerated transportation purposes.

The development of aerial craft has forced a change of opinion by leading authorities as to its mode of employment, as is evidenced by the views entertained in the Hague Convention in 1899 as contrasted with the rules set forth in the Hague Convention of 1907. In the Franco-Prussian War of 1870 the Prussian authorities considered persons attempting to pass their outposts in balloons as spies, in view of the fact that, according to their opinion, the information gained in this manner could be utilized to the disadvantage of the Prussians. Fortunately, the persons captured and treated as spies were not subjected to extreme punishment, and it was only shortly afterwards that it was generally recognized that, in accordance with

the rules of international law, such persons, not being in disguise and not acting secretly, were to be accorded the privileges of prisoners of war.

The Convention of 1899 at the Hague referred to above is of interest to establish the views entertained concurrent with the development and importance of aerial craft. The following was agreed to on July 29 and finally proclaimed on November 1, 1901: "The contracting powers agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons, or by other new methods of similar nature."

With respect to the Laws and Customs of War on Land, at the same Convention it was stipulated in Article 29 that:

An individual can only be considered a spy if, acting clandestinely or on false pretenses, he obtains or seeks to obtain information in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

Thus soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly the following are not considered spies: Soldiers or civilians carrying out their mission openly charged with the delivery of dispatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver dispatches, and generally to maintain communication between the various parts of an army or a territory.

At the second Hague Convention of 1907 the results of aerial navigation had made such wonderful progress that the very states which by their signatures declared themselves adherents of the prohibition to discharge projectiles from balloons, refused to consider this limitation as to aerial warfare. The only restriction in the use of aerial craft was obtained in Article 25 of the Convention of 1907, which provided: "The attack or bombardment by any means whatever of towns, villages, habitations, or buildings which are not defended is forbidden."

The motive inspiring the nations to concede restriction of aerial warfare was based on the impossibility of effectively controlling aircraft; but in line with the results of experiments made thereafter, establishing the complete dirigibility of aircraft, the original opposition to the employment thereof ceased, as the effectiveness of this mode of belligerency was clearly recognized and accepted.

In 1907 Mr. Renault, one of the delegates to the second Hague Conference emphasized that the method of discharging projectiles is of little importance, as it is immaterial whether, in the destruc-

tion of an arsenal, for instance, the projectile is discharged from a cannon or from a balloon. The destruction of a hospital, on the other hand, would be illegal no matter in which manner a projectile would be discharged. He also clearly pointed out the fact that the future of aerial craft, having potential importance, could not be blocked by a priori regulation. The history of the development of aircraft is a testimonial to the foresight of Mr. Renault.

Dr. Hazeltine, of Cambridge University, expressed in a series of lectures delivered in 1910 his views on aerial jurisdiction in time of war. The employment of aerial space above the territory and territorial waters of belligerents is conceded as a proper theater of war. In the case of aerial space above neutral territory, though logically the same should be a legitimate field for the operations of belligerent powers, the dangers incident therewith to the safety and life of neutral citizens have caused the powers to refute the adoption of this view. On the doctrine of the right of sovereignty in the entire air space above its territory and territorial waters, the neutral state has a right to prohibit belligerent powers from transforming neutral aerial zones into fields of belligerent operations.

A further question with which Dr. Hazeltine deals is the right of passage of belligerent aeroplanes through neutral aerial zones. The analogy to customs observed in maritime warfare is not applicable to aerial warfare, and in line with the prediction made by Dr. Hazeltine, the present war has furnished ample incidents of belligerent aeroplanes crossing neutral aerial zones which have been subjected to the air guns of the neutrals, and in case of a forced descent the occupants of the craft have been interned.

1. The Opinion of the French Government in 1910.

The International Conference upon aerial navigation was supplied with a series of suggestions by the French Government, prescribing the methods of determining the nationality and identity of airships, the licensing of air pilots, general prohibition of the carriage of arms, explosives, photographic and radiotelegraphic apparatus. At this conference it was proposed that the navigation of the air above unoccupied territory and above the open sea was to be free.

2. Jurisdiction.

Acts committed on board airships underlie the jurisdiction of the state to which the airship belongs. Acts taking effect outside of the ship, however, underlie the jurisdiction of the state within which the airship may be when the act is committed.

The Comité Juridique International de-l'Aviation finally agreed in 1910, in view of proposals submitted by French and German committees, that aerial navigation is free. States have, in the aerial space above the territory, including territorial waters, only those rights necessary to guarantee the security and exercise of private right. The subject of aerial navigation has caused domestic administrative regulation prescribing certain methods of procedure in case of landing of foreign aircraft within the territory of a respective state.

The jurisdiction of subjacent states has never been seriously questioned. It is of interest, however, to examine the various views and opinions expressed and formulated which preceded the adoption of the present day rules observed in carrying on aerial warfare. The leading groups contended for the entire freedom of the air and for the domain of the air residing in a subjacent state. Another group finally admitted a zone of a certain height to be within the jurisdiction of a state and the zone thereabove to be free. The argument advanced that aerial dominion should be treated in a manner analogous to the maritime situation, is not well taken, in view of the harmful effects which would endanger non-combatants or neutrals,—considerations which are not prevalent in maritime warfare.

In 1911 the Institute of International Law received for consideration a number of rules which attempt to regulate the use of aircraft in time of war:

Article 1. It is generally prohibited to employ aircraft balloons or aeroplanes as means of destruction or attack.

Art. 2. Military balloons or aeroplanes of enemy origin, when subjected to fire by cannons placed on the ground or on board a man-of-war, may defend themselves.

Aerial warfare is permitted:

(a) when a naval battle rages and the balloons or aeroplanes are only twenty kilometers removed from the field of hostility;

(b) in the territorial waters of belligerents in a blockaded zone;

(c) In the aerial zones above the territories of the belligerents.

Art. 3. It is prohibited to capture in the air aircraft, etc., of enemy non-combatants, except in the case where they voluntarily enter the aerial space above the territory of the adversary or in a blockaded zone or in the case of contraband as provided in Art. 4.

Art. 4. It is also prohibited to seize or confiscate neutral aircraft or their cargo under claim of contraband, except in the case where aid is given to a coastal section or a blockaded port or the army or the enemy fleet in the theater of war.

Art. 5. In the cases excepted in Arts. 3 and 4 the rules of maritime prizes are applied.

Art. 6. Private enemy aircraft is prohibited from penetrating into the aerial zone of the adversary state.

Art. 7. The belligerents may prohibit neutral aircraft from entering the aerial zone above their territory.

Art. 8. It is prohibited to aim at neutral aircraft without previous notice and to fire upon them when by accident they are forced to descend.

The rules laid down in the foregoing proposal, while, of course, still different from the accepted rules of to-day, show a close approach thereto, and no doubt have formed the groundwork for the formulation of the present laws.

It is of interest to note the opinions and expressions of writers on aerial craft, a few of which are quoted:

Modern law of nations allows acts of war to take place only within the territory of the belligerents or on the high seas. If air forces are allowed to engage in future wars, they, too, will have to observe this principle. They will be limited to the air domain of the belligerents and to the free parts of the air space. (*Air Sovereignty*—Lycklama a Nijholt, p. 65.)

The great importance of the aforesaid rule lies in its complements, which forbid acts of hostility within neutral territory. Hence the air space of neutral States will be closed to hostilities.

So passage above the neutral land can not be allowed any more than it is permitted on the soil. (*Ibid.*, p. 67.)

But they (the belligerents) clearly do not have the right of using the aerial space surrounding the territory of neutral States (including marginal waters) for military purposes. (*A. S. Hershey, American Journal of International Law*, vol. 6, p. 386.)

During the Russo-Japanese War of 1904-5, the War Department of Russia issued the following rules:

The following actions, prohibited to neutrals, are considered as violating neutrality: The transport of the enemy's troops, its telegrams or correspondence, the supplying it of transport boats or war vessels. Vessels of neutrals found to be breaking any of these rules may be, according to circumstances, captured and confiscated. (*U. S. Foreign Relations*, 1904, p. 728.)

Jurisdiction in the air space has engaged the attention of writers for some time, and the conclusions drawn are ordinarily based on conditions analogous on land and sea. There can be no doubt that the extreme view on the freedom of the air would conflict with the

sovereignty of states. The controlling decisions in many states have well established the principle that jurisdiction over the aerial space above the state is as necessary an attribute as the jurisdiction of the state over its territory or territorial waters. In the United States the courts have repeatedly declared that the National Government has jurisdiction over the aerial space above the territory in matters affecting national interests.

The distinction between public and private rights in the atmosphere, water, etc., have been clearly laid down by Mr. Justice Holmes in 1908:

All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. The limits set to property by other public interests present themselves as a branch of what is called the police power of the State. The boundary at which the conflicting interests balance can not be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side. For instance, the police power may limit the height of buildings, in a city, without compensation. To that extent it cuts down what otherwise would be the rights of property. But if it should attempt to limit the height so far as to make an ordinary building lot wholly useless, the rights of property would prevail over the other public interest, and the police power would fail. To set such a limit would need compensation and the power of eminent domain.

It sometimes is difficult to fix boundary stones between the private right of property and the police power when, as in the case at bar, we know of few decisions that are very much in point. But it is recognized that the State as quasi-sovereign and representative of the interests of the public has a standing in court to protect the atmosphere, the water, and the forests within its territory, irrespective of the assent or dissent of the private owners of the land most immediately concerned. (*Hudson Water Co. v. McCarter*, 209 U. S., 349.)

In 1907 Mr. Justice Holmes held as follows:

It is a fair and reasonable demand on the part of a sovereign that the air over its territory should be polluted on a great scale by sulphurous acid gas, that the forests on its mountains, be they better or worse, and whatever domestic destruction they have suffered, should not be further destroyed or threatened by the act of persons beyond its control, that the crops and orchards on its hills should not be endangered from the same source.

The question of permitting belligerent aircraft to take supplies and the like has not presented any real difficulties in the solution of the same. The analogy to the entrance of a vessel of war into a neutral port is not justified, as in the latter case the time of sojourn, the hour of departure, and other facts may be determined by the other belligerent with reasonable accuracy. The uncertainty of the movement of aircraft, making it impossible to learn the hour of departure and other facts, is responsible for establishing the rule that the belligerent aircraft descending in neutral territory is subject to internment.

LXXXIII.

WIRELESS TELEGRAPHY.

The wireless telegraph has become in recent years an important factor in war.

Under the Berlin Convention of November 3, 1906, it was generally agreed that states should assume a control over wireless telegraphy. In The Hague Convention of 1907, Article III of the chapter defining The Rights and Duties of Neutral Powers stipulates that belligerents are forbidden to:

(a) Erect on the territory of a neutral Power a wireless telegraph station or other apparatus for the purpose of communicating with belligerent forces on land or sea;

(b) Use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.

In Article VIII it is stipulated that "A neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to Companies or private individuals."

In 1912, at the Convention of London, July 5 (ratified by the United States Senate on January 22, 1913), the question as to wireless telegraphy was definitely settled. It was agreed to apply the term of the convention to all radio stations which are established or worked by the contracting parties and open to public service between the coast and vessels at sea. Coastal stations are those on shore or on board a permanently moored vessel. The names of

coastal stations and all other data to acquaint the power of facts tending to facilitate the exchange of radiograms are to be communicated, according to the terms of the agreement.

It is furthermore stipulated in Article IX that radio stations are bound to give absolute priority to calls of distress from whatever source, to similarly answer such calls, and to take such action with regard thereto as may be required.

As regards wireless communication in war time, there were conflicting opinions in vogue as to the rights and duties of belligerents. It is, however, well settled that a belligerent may regulate, or completely interdict, the use of wireless telegraphy in its jurisdiction. It is furthermore incumbent, on board a neutral vessel, to abstain from any act which would tend to render service to one of the belligerents, such as by despatch of messages or the giving of information to the advantage of one belligerent or to the disadvantage of the other. An unneutral act of this kind subjects the wireless apparatus to confiscation, and the vessel also may suffer the consequences of these unneutral acts.

Wireless communication of considerable distance was established in February, 1914, when press messages were exchanged between stations at Sayville, Long Island, and Nauen, a short distance from Berlin, both stations being approximately four thousand miles apart. The messages at both ends could be easily read, and, in spite of the great distance, were declared to be perfect.

The importance of wireless communication was recognized shortly after the outbreak of the war when the cables between the United States and Germany were cut, subjecting the reports emanating from Germany to the censorship of the Allied Powers. The direct messages were sent by wireless to Sayville, Long Island, where, however, a military censor had to be established, in view of the fact that the neutrality of the United States was being jeopardized.

The commercial importance of the wireless telegraph service of the United States has caused a regular service to be installed between Arlington, Virginia, and the Eiffel Tower in Paris. Stations are also provided at Panama and San Francisco, although the latter two are used only occasionally and are not open for commercial purposes.

The most important service offered to the commercial world is that of informing shippers of the whereabouts of vessels, the course pursued, a change of route, and the like.

LXXXIV.**DECLARATION OF PARIS, 1856.**

Considering that maritime law, in time of war, has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties in such a matter, give rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts;

That it is consequently advantageous to establish a uniform doctrine on so important a point:

That the plenipotentiaries assembled in congress at Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into international relations fixed principles in this respect;

The above-mentioned plenipotentiaries, being duly authorized, resolved to concert among themselves as to the means of attaining this object; and, having come to an agreement, have adopted the following solemn declaration:

1. Privateering is, and remains abolished.
2. The neutral flag covers enemy's goods, with the exception of contraband of war.
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag.
4. Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Governments of the undersigned plenipotentiaries engage to bring the present declaration to the knowledge of the states which have not taken part in the congress of Paris, and to invite them to accede to it.

Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof, will be crowned with full success.

The present declaration is not and shall not be binding, except between those powers who have acceded, or shall accede, to it.

Done at Paris, the 16th of April, 1856.

LXXXV.

INTERNATIONAL NAVAL CONFERENCE.

Signed at London February 26, 1909; ratification advised by the
Senate, April 24, 1912.

Blockade in Time of War.

1. A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.
2. In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective,—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.
3. The question whether a blockade is effective is a question of fact.
4. A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.
5. A blockade must be applied impartially to the ships of all nations.
6. The Commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.
7. In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.
8. A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.
9. A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies:

- (1) The date when the blockade begins;
 - (2) The geographical limits of the coastline under blockade;
 - (3) The period within which neutral vessels may come out.
10. If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Article 9 (1) and (2), must be inserted

in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

11. A declaration of blockade is notified—

(1) To neutral Powers, by the blockading Power by means of a communication addressed to the Government direct, or to their representatives accredited to it;

(2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

12. The rules as to declaration and notification of blockade apply to cases where limits of a blockade are extended, or where a blockade is re-established after having been raised.

The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

14. The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

15. Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

16. If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

If, through the negligence of the officer commanding the blockading force, no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

17. Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

18. The blockading forces must not bar access to neutral ports or coasts.

19. Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

20. A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

21. A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

1. Contraband of War.

22. The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband:

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives specially prepared for use in war.

(4) Gun-mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draught, and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armour plates.

(10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

23. Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

24. The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and silver in coin or bullion; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.
- (7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
- (9) Fuel; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.
- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

25. Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

26. If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

27. Articles which are not susceptible of use in war may not be declared contraband of war.

28. The following may not be declared contraband of war:

- (1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
- (2) Oil seeds and nuts; copra.
- (3) Rubber, resins, gums, and lacs; hops.
- (4) Raw hides and horns, bones and ivory.
- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
- (8) Chinaware and glass.
- (9) Paper and paper-making materials.
- (10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.
- (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, and sulphate of ammonia and sulphate of copper.
- (12) Agricultural, mining, textile, and printing machinery.
- (13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
- (14) Clocks and watches, other than chronometers.
- (15) Fashion and fancy goods.
- (16) Feathers of all kinds, hairs, and bristles.
- (17) Articles of household furniture and decoration; office furniture and requisites.

29. Likewise the following may not be treated as contraband of war:

(1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.

(2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

30. Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the

carriage of the goods is direct or entails transshipment or a subsequent transport by land.

31. Proof of the destination specified in Article 30 is complete in the following cases:

(1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.

(2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

32. Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

33. Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

34. The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

35. Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

36. Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

37. A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

38. A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

39. Contraband goods are liable to condemnation.

40. A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

41. If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

42. Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

43. If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

44. A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

2. Unneutral Service.

45. A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband:

(1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.

(2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

46. A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel:

(1) If she takes a direct part in the hostilities;

(2) If she is under the orders or control of an agent placed on board by the enemy Government;

(3) If she is in the exclusive employment of the enemy Government.

(4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

47. Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

3. Destruction of Neutral Prizes.

48. A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

49. As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

50. Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

51. A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

52. If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

53. If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

54. The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the logbook of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

4. Transfer to a Neutral Flag.

55. The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel, which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

56. The transfer of an enemy vessel to a neutral flag effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There, however, is an absolute presumption that a transfer is void:

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If a right to repurchase or recover the vessel is reserved to the vendor.

(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled.

5. Enemy Character.

57. Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

58. The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

59. In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

60. Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

6. Convoy.

61. Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search.

62. If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

7. Resistance to Search.

63. Forceible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

8. Compensation.

64. If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

9. Final Provisions.

65. The provisions of the present Declaration must be treated as a whole, and cannot be separated.

66. The Signatory Powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

67. The present Declaration shall be ratified as soon as possible. The ratification shall be deposited in London.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

68. The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

69. In the event of one of the Signatory Powers wishing to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the denouncing Power.

70. The Powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the Powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding Powers shall be on the same footing as the Signatory Powers.

71. The present Declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

LXXXVI.

SECOND HAGUE CONVENTION.

Concluded Oct. 18, 1907.

I.

Regulations respecting the Laws and Customs of War on Land.

Section I.—On Belligerents.**Chapter I.—The Qualifications of Belligerents.****Article I.**

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

Article II.

The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article I, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

Article III.

The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

Chapter II.—Prisoners of War.**Article IV.**

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

Article V.

Prisoners of war may be interned in a town, fortress, camp, or other place, and bound not to go beyond certain fixed limits; but they cannot be confined except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist.

Article VI.

The State may utilize the labour of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed.

When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance.

Article VII.

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging, and clothing on the same footing as the troops of the Government who captured them.

Article VIII.

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight.

Article IX.

Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed.

Article X.

Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honour, scrupulously to fulfill, both towards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

Article XI.

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

Article XII.

Prisoners of war liberated on parole and recaptured bearing arms against the Government to whom they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and can be brought before the Courts.

Article XIII.

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.

Article XIV.

An inquiry office for prisoners of war is instituted on the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. It is the function of this office to reply to all inquiries about the prisoners. It receives from the various services concerned full information respecting internments and transfers,

releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The office must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is likewise the function of the inquiry office to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.

Article XV.

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

Article XVI.

Inquiry offices enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by the State railways.

Article XVII.

Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are de-

tained, the amount to be ultimately refunded by their own Government.

Article XVIII.

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever Church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

Article XIX.

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

Article XX.

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

Chapter III.—The Sick and Wounded.

Article XXI.

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.

Section II.—Hostilities.

Chapter I.—Means of Injuring the Enemy, Sieges, and Bombardments.

Article XXII.

The right of belligerents to adopt means of injuring the enemy is not unlimited.

Article XXIII.

In addition to the prohibitions provided by special Conventions, it is especially forbidden—

- (a) To employ poison or poisoned weapons;
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;

- (d) To declare that no quarter will be given;
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
- (f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;
- (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;
- (h) To declare abolished, suspended, or inadmissible in a Court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

Article XXIV.

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

Article XXV.

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

Article XXVI.

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

Article XXVII.

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided that they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

Article XXVIII.

The pillage of a town or place, even when taken by assault, is prohibited.

Chapter II.—Spies.**Article XXIX.**

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.

Article XXX.

A spy taken in the act shall not be punished without previous trial.

Article XXXI.

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

Chapter III.—Flags of Truce.**Article XXXII.**

A person is regarded as bearing a flag of truce who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and interpreter who may accompany him.

Article XXXIII.

The commander to whom a flag of truce is sent is not in all cases obliged to receive it.

He may take all the necessary steps to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

Article XXXIV.

The envoy loses his right of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery.

Chapter IV.—Capitulations.**Article XXXV.**

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

Chapter V.—Armistices.**Article XXXVI.**

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Article XXXVII.

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

Article XXXVIII.

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

Article XXXIX.

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the inhabitants and between the inhabitants of one belligerent State and those of the other.

Article XL.

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

Article XLI.

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained.

Section III.—Military Authority Over the Territory of the Hostile State.**Article XLII.**

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

Article XLIII.

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Article XLIV.

A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence.

Article XLV.

It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

Article XLVI.

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

Article XLVII.

Pillage is formally forbidden.

Article XLVIII.

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far

as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

Article XLIX.

If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

Article L.

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

Article LI.

No contribution shall be collected except under a written order, and on the responsibility of a Commander-in-chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

Article LII.

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

Article LIII.

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State,

depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.

Article LIV.

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

Article LV.

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

Article LVI.

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

II.

Rights and Duties of Neutral Powers and Persons in War on Land.

Chapter I.—The Rights and Duties of Neutral Powers.

Article I.

The territory of neutral Powers is inviolable.

Article II.

Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

Article III.

Belligerents are likewise forbidden to:

(a) Erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea;

(b) Use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.

Article IV.

Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents.

Article V.

A neutral Power must not allow any of the acts referred to in Articles II to IV to occur on its territory.

It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory.

Article VI.

The responsibility of a neutral Power is not engaged by the fact of persons crossing the frontier separating to offer their services to one of the belligerents.

Article VII.

A neutral Power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

Article VIII.

A neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to Companies or private individuals.

Article IX.

Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in Articles VII and VIII must be impartially applied by it to both belligerents.

A neutral Power must see to the same obligation being observed by Companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

Article X.

The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act.

Chapter II.—Belligerents Interned and Wounded Tended in Neutral Territory.**Article XI.**

A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory.

Article XII.

In the absence of a special Convention to the contrary, the neutral Power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

Article XIII.

A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.

Article XIV.

A neutral Power may authorize the passage into its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel or war material. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

The sick or wounded brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral Power so as to ensure their not taking part again in the military operations. The same duty

shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

Article XV.

The Geneva Convention applies to sick and wounded interned in neutral territory.

Chapter III.—Neutral Persons.

Article XVI.

The nationals of a State which is not taking part in the war are considered as neutrals.

Article XVII.

A neutral cannot avail himself of his neutrality:

- (a) If he commits hostile acts against a belligerent;
- (b) If he commits acts in favour of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act.

Article XVIII.

The following acts shall not be considered as committed in favour of one belligerent in the sense of Article XVII, letter (b):

(a) Supplies furnished or loans made to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories.

(b) Services rendered in matters of police or civil administration.

III.

Bombardment by Naval Forces in Time of War.

Chapter I.—The Bombardment of Undefended Ports, Towns, Villages, Dwellings, or Buildings.

Article I.

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place cannot be bombarded solely because automatic submarine contact mines are anchored off the harbour.

Article II.

Military works, military or naval establishments, depots of arms or war material, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbour, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the case given in paragraph 1, and that the commander shall take all due measure in order that the town may suffer as little harm as possible.

Article III.

After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities, after a formal summons has been made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

These requisitions shall be in proportion to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in cash; if not, they shall be evidenced by receipts.

Article IV.

Undefended ports, towns, villages, dwellings, or buildings may not be bombarded on account of failure to pay money contributions.

Chapter II.—General Provisions.

Article V.

In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are

collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white.

Article VI.

If the military situation permits, the commander of the attacking naval force, before commencing the bombardment, must do his utmost to warn the authorities.

Article VII.

A town or place, even when taken by storm, may not be pillaged.

IV.

The Adaption to Naval War of the Principles of the Geneva Convention.

Article I.

Military hospital-ships, that is to say, ships constructed or assigned by States specially and solely with a view to assisting the wounded, sick, and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected, and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as warships as regards their stay in a neutral port.

Article II.

Hospital-ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall be likewise respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships must be provided with a certificate from the competent authorities declaring that the vessels have been under their control while fitting out and on final departure.

Article III.

Hospital-ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed under the control of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their name to his adversary at the commencement of or during hostilities, and in any case, before they are employed.

Article IV.

The ships mentioned in Articles I, II, and III shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These vessels must in no wise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents shall have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a Commissioner on board; they can even detain them, if important circumstances require it.

As far as possible, the belligerents shall enter in the log of the hospital-ships the orders which they give them.

Article V.

Military hospital-ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a-half in breadth.

The ships mentioned in Articles II and III shall be distinguished by being painted white outside with a horizontal band of red about a metre and a-half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the

Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent under whose control they are placed.

Hospital-ships which, in the terms of Article IV, are detained by the enemy, must haul down the national flag of the belligerent to whom they belong.

The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their special painting sufficiently plain.

Article VI.

The distinguishing signs referred to in Article V can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned.

Article VII.

In the case of a fight on board a war-ship, the sick-wards shall be respected and spared as far as possible.

The said sick-wards and the matériel belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander, however, into whose power they have fallen may apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

Article VIII.

Hospital-ships and sick-wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

The fact of the staff of the said ships and sick-wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, is not a sufficient reason for withdrawing protection.

Article IX.

Belligerents may appeal to the charity of the commanders of neutral merchant-ships, yachts, or boats to take on board and tend the sick and wounded.

Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case can they be captured for having such persons on board, but, apart from special undertakings that have been made to them, they remain liable to capture for any violations of neutrality they may have committed.

Article X.

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take away with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the Commander-in-chief considers it possible.

The belligerents must guarantee to the said staff, when it has fallen into their hands, the same allowances and pay which are given to the staff of corresponding rank in their own navy.

Article XI.

Sailors and soldiers on board, when sick or wounded, as well as other persons officially attached to fleets or armies, whatever their nationality, shall be respected and tended by the captors.

Article XII.

Any war-ship belonging to a belligerent may demand that sick, wounded, or shipwrecked men on board military hospital-ships, hospital-ships belonging to relief societies or to private individuals, merchant-ships, yachts, or boats, whatever the nationality of these vessels, should be handed over.

Article XIII.

If sick, wounded, or shipwrecked persons are taken on board a neutral war-ship, every possible precaution must be taken that they do not again take part in the operations of the war.

Article XIV.

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other belligerent are prisoners of war. The captor must decide, according to circumstances, whether to

keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

Article XV.

The shipwrecked, sick, or wounded, who are landed at a neutral port with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded persons belong.

Article XVI.

After every engagement, the two belligerents, so far as military interests permit, shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill treatment.

They shall see that the burial, whether by land or sea, or cremation of the dead shall be preceded by a careful examination of the corpse.

Article XVII.

Each belligerent shall send, as early as possible, to the authorities of their country, navy, or army the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other informed as to internments and transfers as well as to the admissions into hospital and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, etc., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

Article XVIII.

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

Article XIX.

The Commanders-in-chief of the belligerent fleets must see that the above Articles are properly carried out; they will have also to see to cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

Article XX.

The signatory Powers shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public.

Article XXI.

The Signatory Powers likewise undertake to enact or to propose to their Legislatures, if their criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article V by vessels not protected by the present Convention.

They will communicate to each other, through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention.

Article XXII.

In the case of operations of war between the land and sea forces of belligerents, the provisions of the present Convention do not apply except between the forces actually on board ship.

Article XXIII.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a process-verbal signed by the Representatives of the Powers taking part therein and by the Netherland Minister for Foreign Affairs.

Subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent by the Netherland Government through the diplomatic channel to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall inform them at the same time of the date on which it received the notification.

Article XXIV.

Non-signatory Powers which have accepted the Geneva Convention of the 6th July, 1906, may adhere to the present Convention.

The Power which desires to adhere notifies its intention to the Netherland Government in writing, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

The said Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion mentioning the date on which it received the notification.

Article XXV.

The present Convention, duly ratified, shall replace as between Contracting Powers, the Convention of the 29th July, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention.

The Convention of 1899 remains in force as between the Powers which signed it but which do not also ratify the present Convention.

V.

Right of Capture in Naval War.

Chapter I.—Postal Correspondence.

Article I.

The postal correspondence of neutrals or belligerents, whatever its official or private character may be, found on the high seas on board a neutral or enemy ship, is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

Article II.

The inviolability of postal correspondence does not exempt a neutral mail-ship from the laws and customs of maritime war as to neutral merchant-ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

Chapter II.—The Exemption from Capture of Certain Vessels.

Article III.

Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.

They cease to be exempt as soon as they take any part whatever in hostilities.

The Contracting Powers agree not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

Article IV.

Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

Chapter III.—Regulations Regarding the Crews of Enemy Merchant-ships Captured by a Belligerent.

Article V.

When an enemy merchant-ship is captured by a belligerent, such of its crew as are nationals of a neutral State are not made prisoners of war.

The same rule applies in the case of the captain and officers likewise nationals of a neutral State, if they promise formally in writing not to serve on an enemy ship while the war lasts.

Article VI.

The captain, officers, and members of the crew, when nationals of the enemy State, are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of the war.

Article VII.

The names of the persons retaining their liberty under the conditions laid down in Article V, paragraph 2, and in Article VI, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

Article VIII.

The provisions of the three preceding Articles do not apply to ships taking part in the hostilities.

VI.**Rights and Duties of Neutral Powers in Naval War.****Article I.**

Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.

Article II.

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

Article III.

When a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral Power, the captor Government, on the demand of that Power, must liberate the prize with its officers and crew.

Article IV.

A prize Court cannot be set up by a belligerent on neutral territory or on a vessel in neutral waters.

Article V.

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular

to erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea.

Article VI.

The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

Article VII.

A neutral Power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunitions, or, in general, of anything which could be of use to an army or fleet.

Article VIII.

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war.

Article IX.

A neutral Power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or roadsteads.

Article X.

The neutrality of a Power is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

Article XI.

A neutral Power may allow belligerent war-ships to employ its licensed pilots.

Article XII.

In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

Article XIII.

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or roadsteads, or in its territorial waters, it must notify the said ship to depart within twenty-four hours or within the time prescribed by local regulations.

Article XIV.

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports, roadsteads, or waters, do not apply to war-ships devoted exclusively to religious, scientific, or philanthropic purposes.

Article XV.

In the absence of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

Article XVI.

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant-ship flying the flag of its adversary.

Article XVII.

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

Article XVIII.

Belligerent war-ships may not make use of neutral ports, roadsteads, on territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

Article XIX.

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

Article XX.

Belligerent war-ships which have shipped fuel in a port belonging to a neutral Power may not within the succeeding three months replenish their supply in a port of the same Power.

Article XXI.

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

Article XXII.

The neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article XXI.

Article XXIII.

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a Prize Court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

Article XXIV.

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

The officers may be left at liberty on giving their word not to quit the neutral territory without permission.

Article XXV.

A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above Articles occurring in its ports or roadsteads or in its waters.

Article XXVI.

The exercise by a neutral Power of the rights laid down in the present Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the Article relating thereto.

Article XXVII.

The Contracting Powers shall communicate to each other in due course all Laws, Proclamations, and other enactments regulating in their respective countries the status of belligerent war-ships in their ports and waters, by means of a communication addressed to the Government of the Netherlands, and forwarded immediately by that Government to the other Contracting Powers.

LXXXVII.**DEFINITIONS OF TERMS EMPLOYED IN INTERNATIONAL LAW.**

Abandonment. The relinquishment of property or rights.

Accretion. The increase of real property caused by gradual imperceptible deposition whereby to the soil portions are added.

Alien. A person residing in one state but owing allegiance to another.

Allegiance. The tie which binds citizens to the government for the protection accorded to them.

Ambassador. An envoy sent by the sovereign state or ruler to another state with a legal commission and authority to transact business on behalf of the country he represents.

Annexation. The act of uniting one thing to another; especially employed in connection with the uniting of lands.

Arbitration. The investigation and determination of matters of difference between contending parties, by one or more unofficial persons, chosen by the parties and called arbitrators or referees.

Armistice. A cessation of hostilities between belligerent nations for a considerable time.

Asylum. Refuge to a fugitive from justice.

Belligerency. The state of being actually at war.

Blockade. The besieging of the shore or ports of one belligerent by the naval forces of another belligerent to prevent access thereto.

Capitulation. The treaty which determines the conditions under which a fortified place is abandoned to the commanding officer of the army which besieged it.

Cession. The transfer of land by one government to another.

Citizenship. The status of a person owing allegiance to a state by reason of birth or naturalization within the jurisdiction of that state.

Claims. The assertion of a liability to the party making it to do some service or pay a sum of money. (16 U. S. 539.)

Capture (Maritime War). The taking of property by one belligerent from another.

Confederacy. An agreement between two or more states or nations by which they unite for their mutual protection and good.

Consul. A commercial agent of a country residing in a foreign country whose duty it is to promote the commerce of the state commissioning him.

Contraband. Articles primarily or ordinarily used for military purposes in time of war.

Contributions. Sums of money levied by the chief of an army from the inhabitants of an invaded territory; this term is used interchangeably with requisitions.

Credence, Letters of. The instrument which authorizes and establishes a public minister in his character with the state or prince to whom they are addressed.

Deserter. A person belonging to the army or navy leaving his post or duties without permission for the purpose of escaping.

Domicile. The place in which one's habitation is fixed without any present intention of removing therefrom.

Droit d'aubaine. The law whereby property held by foreigners dying intestate or testate reverts to the state.

Embargo. A proclamation or order of state, usually issued in time of war or threatened hostilities, prohibiting the departure of ships or goods from some or all ports of such state, until further orders.

Enlistment The act of making a contract to serve the government in a subordinate capacity either in the army or navy.

Exemption. Immunity from any charge, duty, burden or liability.

Exequatur. A certificate issued by the Foreign Department of a state to a consul or commercial agent of another state, authorizing the performance of the consular duties.

Extradition. The surrender of persons charged with crime by one foreign state to another on its demand, pursuant to treaty stipulations between them.

Extraterritoriality. The quality of laws which makes them operate beyond the territory of the power enacting them, upon certain persons or certain rights.

Federal Union. The combining of several states under a central government exercising national sovereignty in foreign matters.

High seas. The uninclosed waters of the ocean, and also those waters on the sea coast which are without the boundaries of low water mark.

Immigration. The removing into one country from another.

Indemnities. That which is given to a person (state) to prevent his suffering damage.

Insurgent. One who is concerned in an insurrection, but distinguished from a rebel in that the former justly opposes the tyranny of constituted authority.

Insurrection. A rebellion of citizens or subjects of a country against its government.

International law. The rules of conduct regulating the intercourse of states.

Jus gentium. Law of nations.

Jus naturae (Jus naturale). The rule and dictate of right reason showing the moral deformity or moral necessity there is in any act according to its suitableness to a reasonable nature. (Grotius.)

Martial Law. The application of military government to persons and property within the scope of it, according to the laws and usages of war, to the exclusion of the municipal government in all respects where the latter would impair the efficiency of military rule and military action.

Mediation. The act of some mutual friend of contending parties who brings them to agree, compromise or settle their disputes.

Military Law. A system of regulations for the government of an army.

Neutrality. The state of a nation which takes no part between two or more other nations at war with each other.

Neutralization. An act of one or more nations imposing upon another state a condition of permanent neutrality.

Pacific blockade. The besieging by one or more states of a port or ports of another without declaring war upon that state.

Passport. A document granted in time of war to protect persons or property from the general operation of hostilities.

Postliminium. The legal fiction applied to persons having been out of the realm (as in the case of having been taken prisoner), whereby they are reinstated into their former status and rights.

Privateer. A vessel owned by one or more private individuals armed and equipped at his or their expense for the purpose of carrying on a maritime war, by the authority of one of the belligerent parties.

Prize court. That branch of admiralty which adjudicates upon cases of maritime captures made in time of war.

Prizes. The apprehension and detention at sea of a ship or other vessel by authority of a belligerent power, either with the design of appropriating it, with the goods and effects it contains, or with that of becoming master of the whole or a part of its cargo.

Protectorate. A relation assumed by a strong nation toward a weak one, whereby the former protects the latter from hostile invasion or dictation and interferes more or less in its domestic concerns.

Rebellion. The taking up of arms traitorously against the government.

Recognition, is an acknowledgment. The term is applied in connection with the acknowledgment of independence and sovereignty of a state. ?

Reprisals. The taking of measures by one nation to the disadvantage of another nation in return or satisfaction for an injury committed by the latter on the former.

Requisition. Articles of consumption or supply levied by an invading army.

Retaliation. Includes reprisal and retorsion.

Retorsion. An act employed by a government to impose the same hard treatment on the citizens or subjects of a state that the latter has used toward the citizens or subjects of the former for the purpose of obtaining the removal of obnoxious measures.

Sovereignty. The union and exercise of all human power possessed in a state.

Sponsions. Agreements entered into by agents of a state in excess of their authority.

State. Association of human being established for the accomplishment of certain ends by certain means.

Suzerainty. The office or jurisdiction of a suzerain.

Treaties. Agreements made and entered into by one independent state with another, in conformity with law, by which it places itself under an obligation.

Truce. An agreement between belligerent parties by which they mutually engage to forbear all acts of hostility against each other for some time, the war still continuing.

Visit and search. The right of a belligerent to board neutral private vessels on the high seas, or in the waters of either belligerent and examine their papers and cargo.

War. A hostile contest with arms between two or more states or communities claiming sovereign rights.

INDEX

[REFERENCES ARE TO PAGES]

- ABROGATION,
 - of treaties, 78.
- ABSOLUTE CONTRABAND, 214.
 - liable to capture, 216.
- ABUSE OF FLAGS OF TRUCE, 172.
- ACQUISITION,
 - and loss of sovereignty, 18.
 - of title to territory, 18.
- ADDRESSES,
 - of diplomatic agents, 49.
- AERIAL WARFARE, 257.
 - prohibition affecting, 147.
- AEROPLANE,
 - see Aerial warfare, Aircraft.
- AGENTS,
 - appointment of diplomatic, 39.
 - commercial, 50.
 - diplomatic, 39.
- AGREEMENTS,
 - see Sponsions, 180.
- AIRCRAFT,
 - jurisdiction concerning, 259.
- AIX-LA-CHAPELLE,
 - Peace of, 68.
- ALIENS, 36, 151.
 - enlistment of, 121.
 - residence of, 36.
 - sojourn of, 37.
 - status of, 21.
- ALLEGIANCE,
 - temporary, of hostile citizens in time of war, 169.
- ALLIANCE,
 - The Holy, 69.
- AMBASSY,
 - see Embassy.
- AMERICA,
 - see United States.
- AMBULANCES AND HOSPITALS, 154.

- ANGARY, 234.
- APPOINTMENT,
 - of diplomatic agents, 39.
- ARBITRATION, 103.
- ARMAMENT OF MERCHANTMEN,
 - submarines as affecting, 250.
- ARMED MERCHANTMEN,
 - in neutral ports, 252.
 - laws regarding status of, 251.
 - on the high seas, 252.
 - relations of belligerents and neutrals as affected by status of, 253.
 - submarines and, 249.
- ARMISTICE,
 - conditions controlling an, 178, 286.
 - Hague convention concerning, 179.
 - truce and, 174, 286.
- ARTICLES,
 - adapted to form contraband, 215.
 - not contraband, 215.
- ASSYRIANS,
 - Babylonians and, 5.
- ASYLUM, 98.
 - in America, 99.
 - in legations, 100.
 - on merchant vessels, 102.
 - on ships of war, 101, 201.
 - the right of, 22.
- ATTACHÉS, 45.
 - military, 45.
 - naval, 46.
 - scientific, 47.
- AUSTRIA-HUNGARY,
 - declaration of war of, 114, 116.
- AUTHORITY,
 - to issue passports, 94.
- AUTOMATIC SUBMARINE CONTACT MINES AND TORPEDOES, 242.
- BABYLONIANS,
 - and Assyrians, 5.
- BALLOONS,
 - see Aerial warfare.
- BARBARY STATES,
 - consular officers in the, 64.
- BELGIUM,
 - conclusion of treaties, 72.
- BELLIGERENCY,
 - recognition of, 17, 126, 127.
- BELLIGERENT CONVOY, 226.

- BELLIGERENTS,**
interned and wounded tended in neutral territory, 291.
prohibited acts of, 146.
qualification of, 279.
status of armed merchantmen as affecting, 253.
- BERLIN,**
Congress of, 70.
- BLOCKADE,**
breach of, by neutral vessels, 211.
declaration of, 211.
in time of war, 210, 266.
- BLOCKADING OPERATIONS,** 212.
- BOMBARDMENTS,**
and sieges in time of war, 161, 283, 292.
by naval forces in time of war, 292.
notice of, 168.
- BOOTY AND CAPTURES,**
gallant conduct of the British in the Ile de la Passe, 138.
in time of war, 133.
- BUILDINGS,**
protected against firing in time of war, 173.
- CABLE,**
see Submarine cable.
- CANAL,**
Corinth, 193.
Kiel, 193.
Panama, 194.
Suez, 189.
- CANALS AND WATERWAYS,**
neutralization of, 188.
- CAPITULATION,** 182, 286.
authority to make, 183.
binding to belligerent and its allies, 184.
limitations of authority to make, 183.
terms of, 183.
- CAPTURED VESSELS,**
see Conquest, 165.
- CAPTURE,**
of vessels carrying contraband, 222, 272.
- CAPTURES,**
and booty in time of war, 133.
- CARLOWITZ,**
Peace of, 67.
- CARTEL** (exchange of prisoners of war), 159.
ship, 159.
- CELEBRATION,**
of fetes by ships of war, 206.
- CHANGES OF GOVERNMENT,** 18.

CITIZENS,

- in a war of rebellion, 141.
- of hostile country considered enemies, 168.
- temporary allegiance of hostile, 169.

CITIZENSHIP, 22.

- impeachment of, 30.
- requirements for acquiring, 25.

CIVIL,

- officers, salaries of, in invaded territory, 133.
- War, 139.

CIVILIANS,

- see also Noncombatants.
- taking up arms spontaneously in time of war, 146.

CLAIMS,

- against United States by her executive officers, 48.

CLASSES,

- and titles in the consular service, 50.

CLASSIFICATION,

- of diplomatic representatives, 40.

COMBATANTS,

- and noncombatants, 119.

COMMENT,

- by United States officers forbidden, 233.

COMMERCE,

- restrained by submarines in time of war, 244.

COMMERCIAL AGENTS, 50.

- jurisdiction of, 53.
- intercourse in time of war, 129.

COMMISSIONERS,

- and special envoys, 39.

COMPENSATION,

- for prize not upheld by court, 277.

CONCLUSION OF TREATIES, 70.

- by Belgium, 72.
- by France, 72.
- by Germany, 71.
- by Great Britain, 71.
- by Italy, 73.
- by Netherlands, 73.
- by Spain, 73.
- by Switzerland, 73.
- by United States, 74.

CONDEMNATION,

- of neutral vessels, 235.
- of vessels carrying contraband, 223.

CONDITIONAL CONTRABAND, 214.

CONDITIONS,

- affecting laying of submarine cables, 240.
- controlling an armistice, 178.
- controlling a truce, 176.
- controlling truce and armistice, 178, 286.

CONFEDERATE GOVERNMENT, 16.

CONFERENCE,

- International Naval, 266.
- Naval, 222.
- of Paris concerning maritime law, 265.

CONFISCATION,

- of enemy property in time of war, 130.

CONGRESS,

- International Naval, 225.
- of Berlin, 70.
- of Vienna, 68, 70.

CONQUEST, 165.

CONSEILLER, 45.

CONSULAR,

- and diplomatic functions, 48.
- office, superadded, 42.
- officers in eastern countries, 63.
- officers in the Barbary States, 64.
- officers, judicial powers of, 55.
- officers, military rank of, 64.
- officers, salutes to, 64.
- service, 50.
- service, classes and titles in the, 50.
- treaty, 58.

CONSULS, 51.

- immunities and privileges of, 57.
- jurisdiction of, 53.
- merchant, 58.
- powers and duties of, 51.

CONTACT MINES AND TORPEDOES,

- automatic submarine, 242.

CONTINUOUS RESIDENCE, 28.

CONTRABAND,

- absolute, 214
- absolute, liable to capture, 216.
- articles adapted to form, 215.
- articles not, 215.
- conditional, 214.
- delivery of, 223.
- hydroaeroplanes not, 236.
- of war, 213, 268.
- vessels carrying, 216, 223.

CONTRACTS,

- in time of war, 138.

CONTRIBUTIONS,

- levied by military occupant, 136, 288.

CONTROL OF SUBMARINE CABLES,

- government, 239.

CONVENTION,

- see also Conference, Congress.

- Geneva, 153.

- International Prize Court, 225.

- The Hague, 103, 146, 161, 179, 279.

CONVOY, 225, 276.

- belligerent, 226.

- neutral, 226.

CORINTH CANAL, 193.

COUNSEL TO EMBASSY OR LEGATION,

- local, 47.

CREDENTIALS,

- and reception of diplomatic agents, 42.

CRIMEAN WAR,

- and treaty of Paris, 1856, 69.

CRIMES,

- committed by American soldiers in time of war, 134.

CUTTING OF SUBMARINE CABLES, 241.

DECEIT,

- against an enemy in time of war, 160.

DECLARATION,

- of blockade, 211.

- of intention to become a citizen of the United States, 27.

- of intention to become a citizen of the United States, withdrawal of, 28.

- of Paris, 1856, concerning maritime law, 265.

- of war in modern times, 113.

- of war in the Middle Ages, 112.

- of war of the Greeks, 111.

- of war of the Romans, 112.

DE FACTO,

- and de jure governments, 15.

DEFINITION,

- of terms employed in international law, 307.

DELIVERY OF CONTRABAND, 223.

DESERTION,

- from United States army, 144.

- of seamen, 52.

DESTRUCTION,

- of neutral prizes, 274.

DEVASTATION AND DESTRUCTION,

- in time of war, 164.

DIFFERENCE BETWEEN SHIPS OF WAR AND SHIPS OF COMMERCE,

- see Ships of war.

- DIPLOMATIC,
 - and consular functions, 48.
 - grades in the United States, 41.
 - representatives, grades of, 42.
- DIPLOMATIC AGENTS, 39.
 - addresses of, 49.
 - appointment of, 39.
 - credentials and reception of, 42.
 - duties of, 48.
 - presents to, 49.
 - rights to protection of, 44.
 - speeches of, 49.
- DISCHARGE,
 - and shipment of seamen, 52.
- DISCIPLINE,
 - and maintenance of prisoners of war, 148.
- DROIT D'AUBAINE (property held by foreigners), 166.
- DUAL NATIONALITY, 29.
- DUTIES,
 - and powers of consuls, 51.
 - imposed upon submarines, 251.
 - of diplomatic agents, 48.
 - of merchant vessels in time of war, 218.
 - of states, rights and, 16.
- DUTY,
 - ships of war may purchase supplies free of, 201.
- EASTERN COUNTRIES,
 - consular officers in, 63.
- EFFECTS OF TRUCE, 175.
- EGYPT,
 - international relations of, 4.
- EGYPTIAN COMMONWEALTH, 3.
- EMBASSY OR LEGATION,
 - local counsel to, 47.
 - secretaries of, 44.
- EMBLEM,
 - Red Cross, 156.
- END OF WAR, 184.
- ENEMY,
 - citizen of hostile country considered, 168.
 - property in time of war, confiscation of, 130.
 - property in time of war, public and private, 132.
 - merchant ships, 301.
 - vessel, character of, 276.
- ENFORCEMENT OF TREATIES, 76.
- ENGLAND,
 - see Great Britain.
- ENLISTMENT,
 - of aliens, 121.

- ENVOYS,
 - commissioners and special, 39.
- EVIDENCE,
 - of flag of vessels, 201.
- EXCHANGE,
 - of war prisoners, 159.
- EXEMPTION,
 - from capture of certain vessels in time of war, 301.
 - from jurisdiction of ships of war, limitations of, 199.
 - from search, 225.
 - from territorial jurisdiction, 21.
- EXPATRIATION, 37.
- EXTRADITION, 96.
- EXTRATERRITORIALITY,
 - of ships of war, 199.
- EXTRATERRITORIAL JURISDICTION, 22.
- FETES,
 - celebrated by ships of war, 206.
- FLAG,
 - of ships, 202.
 - of truce, 172, 285.
 - of truce, abuse of, 172.
 - of truce, bearer of, 172.
 - of truce, United States Navy Regulations concerning, 173.
 - transfer of enemy vessels to a neutral, 221, 275.
- FOREIGN COUNTRIES,
 - passports issued by United States diplomatic representatives in, 95.
 - recognition of belligerency by, 127.
- FOREIGNERS IN HELLAS,
 - the right of, 7.
- FORM OF TREATY, 76.
- FORTS,
 - salutes between ships and, 204.
- FRANCE,
 - conclusion of treaties, 72.
 - declaration of war by, 116, 117, 118.
- FRANCO-PRUSSIAN TREATY, 70.
- FREE NAVIGATION,
 - see Neutralization of canals and waterways.
- GENERAL CONCLUSIONS,
 - concerning war and peace, 7, 109, 169.
- GENEVA CONVENTION (Red Cross), 153.
 - see also Hague Convention.
 - (Red Cross), 153.
- GERMANY,
 - conclusion of treaties, 71.
 - declaration of war by, 114, 115.
 - requisitions in Versailles made by, 137.
- GOOD OFFICES, 106.

- GOVERNMENT,
 - changes of, 18.
 - confederate, 16.
 - de facto and de jure, 15.
 - kinds of, 14.
 - state and, 14.
- GRADE OF DIPLOMATIC REPRESENTATIVES, 42.
- GRADES IN THE UNITED STATES,
 - diplomatic, 41.
 - of naval officers concerning visits on ships of war, 206.
- GREAT BRITAIN,
 - conclusion of treaties, 71.
 - declaration of war by, 116, 117, 118.
 - reply to United States proposal on conduct of submarine warfare by, 247, 248.
- GREEKS,
 - declaration of war by the, 111.
 - see also Hellas, Hellenes, Hellenic.
- GROTIUS, 11.
- GUERRILLAS,
 - and guerrilla warfare, 144.
 - and levies en masse distinguished, 146.
 - punishment of, 145.
- HAGUE CONVENTION,
 - aerial warfare, 257.
 - angary, 235.
 - armistice, 179.
 - mediation, 103.
 - prohibited war measures, 146.
 - Second (1907), 279.
 - sieges and bombardments, 161.
- HELLAS,
 - the right of foreigners in, 7.
- HELLENES,
 - the international relations of the, 6.
- HELLENIC WORLD, 6.
- HIGH SEAS,
 - armed merchantmen on the, 252.
 - definition of the term, 186.
- HISTORICAL DEVELOPMENT,
 - of international law, 3.
 - of international law, introduction to, 3.
 - of treaties, 65.
- HOBSON'S HEROIC ACT, 160.
- HOLY ALLIANCE, 69.
- HOSPITALS AND AMBULANCES, 154.
- HOSPITAL SHIPS, 158.
- HOSTILE CITIZENS,
 - temporary allegiance of, 169.
 - territory, occupation of, 132.

- HOSTILITIES,
 - end of, 184.
 - suspension of, 182.
 - see also War.
- HUMANITARIAN ASPECTS OF LAW OF WAR, 167.
- HYDROAEROPLANES, 236.
- IMMUNITIES,
 - and privileges of consuls, 57.
- IMPEACHMENT,
 - of citizenship, 30.
- INDEMNITY,
 - for unjust seizure of vessels, 224.
- INDEPENDENCE,
 - sovereignty and, 12.
- INDUSTRIAL PROPERTY,
 - International Union for the protection of, 92.
- INFORMATION AGENCIES FOR PRISONERS OF WAR, 150.
- INSTITUT DE DROIT INTERNATIONAL,
 - resolutions concerning passage of vessels through territorial waters, 187.
- INSURGENTS,
 - see Belligerency.
- INSURRECTION, 139.
- INTENTION TO BECOME AN AMERICAN CITIZEN,
 - declaration of, 26.
- INTERNATIONAL,
 - Naval Conference, 266.
 - Naval Congress, 225.
 - Prize Court Convention, 225.
 - relations of Egypt, 4.
 - relations of the Hellenes, 6.
 - relations of the Romans, 8.
 - Union for the protection of industrial property, 92.
- INTERNATIONAL LAW, 1.
 - definition of terms employed in, 307.
 - historical development of, 3.
 - introduction to historical development of, 3.
- INTERPRETATION OF TREATIES, 77.
- INTRODUCTION,
 - to historical development of international law, 3.
- INVALID TRANSFER,
 - of flag, 222.
- INVIOLABILITY,
 - of flag bearer (flag of truce), 172.
- ISRAELITES, 6.
- ITALY,
 - conclusion of treaties, 73.
- JUDICIAL POWERS,
 - of consular officers, 55.

JURISDICTION,

- concerning aircraft, 259.
- exemption from territorial, 21.
- extraterritorial, 22.
- limitations of, 21.
- military, 167.
- national, 20.
- of consuls and commercial agents, 53.
- of ships of war, limitations of exemption from, 199.
- over vessels, 20.

JUS GENTIUM,

- of the Romans, 9.

KIEL CANAL, 193.

KINDS OF GOVERNMENT, 14.

LANDING OF SUBMARINE CABLES, 239.

- conditions affecting, 240.

LAW,

- international, 1.
- maritime, 10.
- martial, 170.
- naturalization, 25.

LAWS AND CUSTOMS,

- of war on land, 279.

LAYING OF SUBMARINE CABLES, 239.

- conditions affecting, 240.

LEGATION OR EMBASSY,

- local counsel to, 47.
- secretaries of embassy or, 44.

LEGATIONS,

- asylum in, 100.

LENIENT MEASURES,

- accorded to noncombatants, 168.

LETTERS OF MARQUE OR PRIVATEERS, 209.

LEVIES EN MASSE, 146.

- and guerrillas distinguished, 146.

LIBERTIES,

- and payment granted to prisoners of war, 151.

LICENSES,

- to carry on a trade interdicted by laws of war, 134.

LIMITATIONS,

- of exemption from jurisdiction of ships of war, 199.
- of jurisdiction, 21.

LOCAL COUNSEL,

- to embassy or legation, 47.

LOSS OF SOVEREIGNTY,

- acquisition and, 18.

MACEDONIA, 8.

MAIL,

- steamers and mail in time of war, 219.

- MAINTENANCE,
 - and discipline of prisoners of war, 148.
- MARGINAL SEA, 186.
- MARINE,
 - see naval forces.
- MARITIME LAW, 10.
 - Declaration of Paris concerning, 265.
- MARTIAL LAW, 170.
 - object of, 170.
 - scope of, 170.
- MEDIATION, 103.
- MEDIEVAL STATES, 10.
- MEN-OF-WAR,
 - see ships of war.
- MERCHANT CONSULS, 58.
- MERCHANTMAN,
 - see merchant vessels.
- MERCHANT VESSELS,
 - armed, see Privateers.
 - asylum in, 102.
 - charged with removal of the sick and wounded, 157.
 - duties of, in time of war, 218.
 - in neutral ports, armed, 252.
 - laws concerning status of armed, 251.
 - on the high seas, armed, 252.
 - submarines and, 249.
 - submarines affecting armament of, 250.
- MIDDLE AGES,
 - declaration of war in the, 112.
- MILITARY,
 - attachés, 45.
 - jurisdiction, 167, 287.
 - necessity in time of war, 167.
 - occupation, 15, 287.
 - rank of consular officers, 64.
 - status, recognition of, 145.
- MINES AND TORPEDOES,
 - automatic submarine contact, 242.
- MINISTERS,
 - classification of, 40.
- MODERN TIMES,
 - declaration of war in, 113.
- MODES OF ACQUIRING TITLE TO TERRITORY, 19.
- MONROE DOCTRINE, 91.
- MOST-FAVORED-NATION CLAUSE, 91.
- MUNICIPAL LAWS,
 - in invaded territory suspended, 133.
- MÜNSTER AND OSNABRÜCK,
 - treaties of, 67.

- NATIONALITY,
 - dual, 29.
 - of vessels, 201.
 - of vessels, proof of, 203.
 - sick and wounded soldiers treated irrespective of, 155.
- NATIONAL JURISDICTION, 20.
- NATURALIZATION,
 - in time of war, 35.
 - laws, 25.
 - requirements in other countries, 30.
- NAVAL,
 - attachés, 46.
 - Conference, International, 266.
 - Conference, London, 222.
 - forces, assistance rendered to the shipwrecked or wounded by, 156.
 - forces, bombardment by in time of war, 292.
 - warfare, 294.
- NAVIGATION,
 - of canals and waterways, 188.
- NAVY,
 - see naval forces.
- NECESSITY,
 - military, in time of war, 167.
- NETHERLANDS,
 - conclusion of treaties, 73.
- NEUTRAL,
 - convoy, 226.
 - countries, seizure of property of, in time of war, 234.
 - ports, armed merchantmen in, 252.
 - powers and persons, rights and duties of, 289, 292, 302.
 - vessel, breach of blockade by, 211.
 - vessel, character of, 276.
 - vessel, destruction of captured, 275.
- NEUTRALITY, 227.
 - declaration, United States, 228.
- NEUTRALIZATION,
 - of canals and waterways, 188.
- NEUTRALIZED STATES, 13.
- NEUTRALS,
 - status of armed merchantmen as affecting, 253.
- NONCOMBATANTS,
 - combatants and, 119.
 - status of, attached to armies, 150.
- NONCONTRABAND CHARACTER OF HYDROAEROPLANES, 236.
- NOTICE,
 - of bombardment in time of war, 168.
- NYSTADT,
 - Treaty of, 68.

OBJECT,

- of martial law, 170.
- of treaties, 66.

OBLIGATION OF PAROLE OF PRISONERS OF WAR, 153.

OCCUPATION,

- military, 15.
- of hostile territory, 132.

OFFICERS,

- civil, their salaries in invaded territory, 133.

OFFICES,

- good, 106.

OLDEST STATE TREATIES, 65.

OSNABRÜCK,

- Treaties of Münster and, 67.

PANAMA CANAL, 194.

PARIS,

- Declaration of, concerning maritime law, 265.
- The First Peace of, 68.
- Treaty of 1856 and Crimean War, 69.

PAROLE,

- obligation of, and punishment for transgression, 153.
- of prisoners of war, 149, 152.

PARTITIONS OF POLAND, 68.

PASSPORTS, 94.

- and safe conducts, 135.
- authority to issue, 94.
- issued by United States diplomatic representatives in foreign countries, 95.
- refusal of, 95.

PAYMENT,

- and liberties granted to prisoners of war, 151.

PERSIAN EMPIRE, 5.

PEACE,

- of Aix-la-Chapelle, 68.
- of Carlowitz, 67.
- of Paris and Congress of Vienna, The First, 68, 70.
- of Prague, 70.
- of Utrecht, 67.
- of Westphalia, 66.
- War and, 7.

PHENICIANS, 4.

POISON,

- and poisoned weapons in time of war, 283.

POLAND,

- partitions of, 68.

POSTLIMINY, 166.

POWERS,

- and duties of consuls, 51.
- and rights of insurgents whose belligerency is recognized, 126.
- of consular officers, judicial, 55.

- POWER TO DECLARE WAR, 110.
- PRAGUE,
 - Peace of, 70.
- PRESENTS TO DIPLOMATIC AGENTS, 49.
- PRESIDENT WILSON'S APPEAL TO AMERICANS, 233.
- PRISONERS,
 - of war, 148, 279.
 - exchange of, 159.
 - information agencies for, 150.
 - parole of, 149, 152.
 - payment and liberties granted to, 151.
 - reports on, 151.
 - rights to services of, 149.
- PRIVATE ARMED VESSELS,
 - see Privateers.
- PRIVATEERS OR LETTERS OF MARQUE, 209.
- PRIVILEGES,
 - and immunities of consuls, 57.
- PRIZE,
 - compensation for, not upheld by court, 277.
 - Court Convention, International, 225..
- PRIZE COURTS,
 - see also Indemnity.
- PROHIBITED WAR MEASURES, 146.
- PROHIBITION,
 - affecting aerial warfare, 147.
 - affecting land war, 148.
- PROOF OF NATIONALITY OF SHIPS, 203.
- PROPERTY,
 - of neutrals in time of war (see Angary).
 - of the enemy, confiscation of, 130.
 - public and private, of the enemy, 132.
 - taken by enemy, 166.
- PROTECTED STATES, 13.
- PROTECTION,
 - of buildings against firing, 173.
 - of flag bearer (flag of truce), 172.
 - of hospital ships, 158.
 - of industrial property, International Union for the, 92.
 - of merchant vessels assigned to Red Cross work, 157.
 - of property, see Postliminy, 166.
 - of submarine cables, 241.
 - rights of diplomatic agents to, 44.
- PUNISHMENT,
 - for transgression of parole of prisoners of war, 153.
 - of guerrillas, 145.
 - of spies and war-traitors, 143.
 - of unauthorized acts in invaded territory, 133.

- RANK OF CONSULAR OFFICERS,
 - military, 64.
- RATIFICATION OF TREATIES, 78.
- REBELLION, 139, 140.
- REBELS,
 - treatment of, 140.
- RECEPTION OF DIPLOMATIC AGENTS,
 - credentials and, 42.
- RECOGNITION,
 - of belligerency, 17, 126.
 - of military status, 145.
 - of states, 16.
- RED CROSS,
 - ambulances and hospitals, 154.
 - emblem, 156.
 - Geneva Convention, 153.
 - hospitals and ambulances, 154.
 - treatment of the sick or wounded, 155.
 - work of merchant vessels in time of war, 157.
 - work of naval forces in time of war, 156.
- REFUSAL OF PASSPORTS, 95.
- REGISTRY OF VESSELS, 203.
- REGULATIONS REGARDING FLAGS OF TRUCE,
 - U. S. Navy Department, 173.
- REPORTS,
 - on prisoners of war, 151.
- REPRISALS,
 - in time of war, 162.
- REQUIREMENTS,
 - for acquiring citizenship in America, 25.
 - for acquiring citizenship in other countries, 30.
- REQUISITIONS,
 - by military occupant, 136, 288.
 - made by Germans in Versailles, 137.
- RESIDENCE,
 - continuous, 28.
 - of aliens, 36.
- RESISTANCE,
 - to search by neutral vessels in time of war, 220, 277.
- RESTRAINT,
 - on commerce by submarines in time of war, 244.
- RETALIATIONS,
 - in time of war, 163.
- RETORSIONS,
 - in time of war, 163.

RIGHT,

- of asylum, 22.
- of capture in naval war, 300.
- of passage through territorial sea, 186.
- to appropriate property of neutrals, 234.
- to services of prisoners of war, 149.

RIGHTS,

- and duties of neutral powers in naval war, 302.
- and duties of states, 16.
- and powers of insurgents whose belligerency is recognized, 127.
- exercised by cruisers in time of war, 217.
- of diplomatic agents to protection, 44.

ROMANS,

- declaration of war of the, 112.
- international relations of the, 8.
- the jus gentium of the, 9.

ROMAN STATE, 8.

RULES,

- for establishing title to territory, 19.
- governing an armistice, 178.
- governing a truce, 176.

SAFE CONDUCTS AND PASSPORTS, 135.

SAILORS,

- see Naval forces.

SALUTES,

- between ships and forts, 204.
- between ships of war, 205.
- of vessels carrying sovereigns, 205.
- to consular officers, 64.
- U. S. regulations regarding, 207.

SCIENTIFIC ATTACHÉS, 47.

SCOPE,

- of martial law, 170.
- of military necessity in time of war, 167.

SEAMEN,

- desertion of, 52.
- shipment and discharge of, 52.

SEARCH,

- exemption from, 225.
- resistance to, by vessels in time of war, 220, 277.
- visit and, 217.

SECRETARIES,

- of embassy or legation, 44.

SEMI-SOVEREIGN STATES, 13.

SERVICE,

- consular, 50.
- unneutral, 235, 273.

SHIPMENT AND DISCHARGE OF SEAMEN, 52.

SHIPS,

- and forts, salutes between, 204.
- asylum on, 101, 201.
- extraterritoriality of, 199.
- fetes celebrated by, 206.
- hospital, 158.
- limitations of exemption from jurisdiction of, 199.
- of war, 198.
- salutes between, 205.
- supplies free of duty for, 201.
- visits on, 205.
- see also Vessels.

SICK AND WOUNDED SOLDIERS,

- in time of war, 155, 283.

SIEGES AND BOMBARDMENTS,

- in time of war, 161, 283.

SOJOURNERS &c.

SOLDIERS

- treatment of sick and wounded, 155, 283.

SOVEREIGNTY,

- acquisition and loss of, 18.
- and independence, 12.

SPAIN,

- conclusion of treaties, 72.

SPEECHES OF DIPLOMATIC AGENTS, 49.

SPIES, 141, 144, 285.

SPONSIONS, 180.

- ratification of, 180.

STATE,

- and government, 14.
- treaties, oldest, 65.

STATES, 11.

- defined, 11.
- medieval, 10.
- neutralized, 12.
- protected, 13.
- recognition of, 16.
- rights and duties of, 16.
- semi-sovereign, 13.

STATUS,

- of aliens, 21.
- of armed merchant vessels, 251.
- of submarines, 249.

SUBMARINE,

- contact mines and torpedoes, automatic, 242.
- warfare, reply of British Government to U. S. proposal for conduct of, 247, 248.
- warfare, U. S. proposal for conduct of, 246, 248.

- SUBMARINE CABLES,
 - conditions affecting laying of, 240.
 - cutting of, 241.
 - landing of, 239.
 - protection of, 241, 289.
 - under control of government, 239.
- SUBMARINES, 243.
 - and armed merchantmen, 249.
 - duties imposed upon, 251.
 - restraint of commerce by, 244.
- SUEZ CANAL, 189.
 - London Conference, 190.
 - Paris Conference, 190.
- SUPERADDED CONSULAR OFFICE, 42.
- SUPPLIES FREE OF DUTY FOR SHIPS OF WAR, 201.
- SURRENDER,
 - or capitulation, 182.
 - terms of, 183.
- SUSPENSION,
 - of arms, 182.
 - of hostilities, 172, 182.
 - of intercourse in time of war, 129.
 - of municipal laws in time of war, 133.
- SWITZERLAND,
 - conclusion of treaties, 73.
- TAXES,
 - levied by military occupant, 287.
- TELEGRAPHY,
 - wireless, 263.
- TEMPORARY ALLEGIANCE OF HOSTILE CITIZENS, 169.
- TERRITORIAL,
 - jurisdiction, exemption from, 21.
 - waters, see Marginal Sea.
- TERRITORY,
 - acquisition of title to, 18.
 - modes of acquiring title to, 19.
 - occupation of hostile, 132, 287.
 - rules for establishing title to, 19.
- TIME LIMIT,
 - for transfer of enemy vessel to neutral flag, 222.
 - of truce, 175.
- TITLES AND CLASSES IN THE CONSULAR SERVICE, 50.
- TITLE TO TERRITORY,
 - acquisition of, 18.
 - modes of acquiring, 19.
 - rules for establishing, 19.
- TOLLS,
 - levied by military occupant, 136.
- TORPEDOES,
 - automatic submarine contact mines and, 242.

TRAITORS,

in time of war, 142, 143.

TRANSFER,

of flag, 221.

of flag, valid and invalid, 222.

of enemy vessel to neutral flag, 221, 275.

of enemy vessel to neutral flag, time limit for, 222.

TREATIES, 9, 65.

abrogation of, 78.

concluded by whom, 76.

concluded in time of war, 75.

enforcement of, 76.

historical development of, 65.

interpretation of, 77.

object of, 66.

of Münster and Osnabrück, 67.

of the United States, 80.

oldest state, 65.

ratification of, 78.

TREATMENT,

of disloyal citizens in time of war, 141.

of prisoners of war, 148.

of rebels, 140.

of sick and wounded soldiers in time of war, 155.

TREATY,

Clayton-Bulwer, 189.

consular, 58.

form of, 76.

Franco-Prussian, 70.

of Nystadt, 68.

of Paris, 1856, and the Crimean War, 69.

TRUCE,

abuse of flag of, 172.

and armistice, 174.

and its effects, 175.

flag of, 172, 285.

rules governing, 176.

time limits of, 175.

see also Suspension of Hostilities.

UNITED STATES,

asylum in the, 99.

conclusion of treaties, 74.

declaration of war against Germany, 117.

desertion from army of the, 144.

diplomatic grades in the, 41.

neutrality proclamation, 228.

proposal for the conduct of submarine warfare, 246, 248.

regulations regarding flags of truce, Navy Department, 173.

UNITED STATES (Continued)

- regulations regarding salutes, 207.
- treaties of the, 80.
- see also America.

UNNEUTRAL SERVICE, 235, 273.

UTRECHT,

- Peace of, 67.

VALID TRANSFER OF FLAG, 222.

VESSELS,

- armed private, see Privateers, 209.
- carrying conditional contraband, 216.
- carrying contraband, 216, 222.
- carrying contraband, capture of, 222.
- carrying contraband, condemnation of, 222.
- carrying sovereigns, salute of, 205.
- character of enemy, 276.
- character of neutral, 276.
- condemnation of, 235.
- destruction of captured neutral, 274.
- exemption from capture in time of war, 301.
- jurisdiction of, 20.
- merchant, asylum in, 102.
- merchant, in time of war, 102, 157, 209, 218, 249, 250, 301.
- nationality of, 201.
- proof of nationality of, 203.
- registry of, 203.
- transfer to a neutral flag of enemy, 221, 275.
- unaware of war, 223.
- see also Ships of war, Merchant vessels, Naval forces.

VIENNA,

- Congress of, 68, 70.

VISIT AND SEARCH,

- of vessels in time of war, 217.
- rights exercised by cruiser regarding, 217.

VISITS OF SHIPS OF WAR,

- ceremony of, 205.
- grades of naval officers concerning, 206.

WAR,

- aircraft, jurisdiction in time of, 259.
- allegiance, temporary, of hostile citizens in time of, 169.
- and peace, 7.
- as a means to an end, 169.
- assistance to shipwrecked by naval forces in time of, 156.
- blockade in time of, 210, 266.
- bombardments, in time of, 168, 292.
- bombardments of buildings in time of, 173.
- booty and capture in time of, 133, 301.
- cables in time of, 241.
- capture of vessels carrying contraband of, 223.

WAR (Continued)

- civil, 139.
- civilians or noncombatants in time of, 168.
- civilians taking up arms spontaneously in time of, 146.
- confiscation of enemy property in time of, 130.
- contraband of, 213.
- contracts in time of, 138.
- contributions, etc., levied by military occupant in time of, 136.
- Crimean, and Treaty of Paris, 69.
- crimes committed by U. S. soldiers in time of, 134.
- deceit against enemy in time of, 159.
- declaration of, 111.
- destruction and devastation in time of, 164.
- duties of merchant vessels in time of, 218.
- end of, 184.
- exchange of prisoners of, 159.
- general conclusions, 109, 169.
- guerrilla, 144.
- humanitarian aspects of laws of, 167.
- hydroaeroplanes not vessels of, 238.
- laws and customs of land, 279.
- licenses to carry on trade interdicted by law in time of, 134.
- mail steamers and mail in time of, 219, 300.
- measures prohibited, 146.
- military necessity in time of, 167.
- municipal laws in time of, 133.
- naturalization in time of, 35.
- naval, see warfare.
- neutral powers and persons, rights of, in time of, 289, 292.
- noncombatants in time of, 168.
- notice of bombardments in time of, 168.
- objects of, 169.
- poison and poisoned weapons in time of, 283.
- power to declare, 110.
- prisoners of, 148, 279.
- prohibition affecting aerial, 147.
- prohibition affecting land, 148.
- punishment of unauthorized acts in time of, 133.
- reprisals in time of, 162.
- rescue work of merchant vessels in time of, 157.
- rescue work of naval forces in time of, 156.
- retaliation and retortion in time of, 163.
- rights exercised by ships of, 217.
- search and visit of vessels in time of, 217.
- search and visit of vessels in time of, resistance to, 220.
- seizure of property of neutrals in time of, 234.
- ships of, 198.
- sieges and bombardments in time of, 161.
- submarine cables in time of, 241.

WAR (Continued)

- submarines in time of, 243.
- suspension of intercourse in time of, 129.
- traitors, 142, 143.
- transfer of flag in time of, 222.
- treaties concluded in time of, 75.
- treatment of rebels in time of, 141.
- treatment of sick and wounded soldiers in time of, 155, 283, 291.
- vessels, merchant, in time of, 301.
- vessels, unaware of existence of, 223.
- visit and search of vessels in time of, 217.
- wireless telegraphy in time of, 263.

WARFARE,

- aerial, 257.
- guerrilla, 144.
- naval, 294.
- prohibition affecting aerial, 147.
- prohibition affecting land, 148.
- right of capture in naval, 300.
- rights and duties of neutral powers in naval, 302.

WILSON,

- appeal to Americans by President, 233.
- see also Neutrality.

WITHDRAWAL OF DECLARATION OF INTENTION TO BECOME AMERICAN CITIZEN, 28.

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